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SERIES XXXIV

NO. 1

**JOHN HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE**

Under the Direction of the

**Departments of History, Political Economy, and
Political Science**

**THE BOYCOTT IN AMERICAN
TRADE UNIONS**

BY

**LEO WOLMAN, Ph.D.
Fellow in Political Economy**

**BALTIMORE
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PREFACE

This monograph had its origin in an investigation carried on by the author while a member of the economic seminary of the Johns Hopkins University. The chief sources of information have been the trade-union publications contained in the University library. Documentary study, however, has been supplemented by personal interviews with trade-union officials and with employers.

The author wishes to express his appreciation of the helpful criticism received from Professor J. H. Hollander and Professor G. E. Barnett.

L. W.

THE BOYCOTT IN AMERICAN TRADE UNIONS

CHAPTER I

THE NATURE OF THE BOYCOTT

The passage by Congress of the labor union, injunction and contempt sections of the Clayton Anti-Trust Bill and the decision by the United States Supreme Court on January 5, 1915, affirming the judgment of the lower courts in the famous Danbury Hatters' case¹ should again direct the attention of students of the labor problem to the position of the trade-union boycott in American industrial life. A decision by the judicial branch of the federal government which imposes a severe legal disability upon the boycott and the adoption by the legislative department of an act which is interpreted as both sanctioning and forbidding its use² warrant a more thorough examination than has heretofore been made of the origin and function of the boycott as a re-

¹ 235 U. S. 522.

² Thus, "Mr. Gompers, at least, regards the act as an unqualified victory. In his leading article in the November American Federationist (1914), he says: 'The labor sections of the Clayton Anti-Trust act are a great victory for organized labor. In no other country in the world is there an enunciation of fundamental principle comparable to the incisive, virile statement in section C.'" (P. G. Wright, "The Contest in Congress between Organized Labor and Organized Business," Quarterly Journal of Economics, vol. xxix, p. 261). On the other hand, Daniel Davenport, General Counsel for the American Anti-Boycott Association, says: "In the shape in which it finally passed it makes few changes in existing laws relating to labor unions, injunctions and contempts of court, and those are of slight practical importance" (An Analysis of the Labor Union, Injunction and Contempt Sections of the Clayton Anti-Trust Bill, published by the American Anti-Boycott Association). The actual effect of the Clayton Anti-Trust Act cannot, of course, be determined until it has been interpreted by the courts.

source of trade unions. In the case of the boycott, as in such other trade-union devices as the restriction of output, the regulation of the number of apprentices, and the closed shop, popular condemnation or approval has been too often dictated by prejudices engendered by the natural alignment of sections of the population with the employing or the laboring class. American literature on the subject has made little attempt up to the present time to lift the discussion above the plane of partisan controversy. In this monograph it is designed to make an impartial study of the boycott in its relation to trade unionism; of the circumstances which attend the emergence of the boycott; of its value as an organizing device; of the effect upon trade unions of its abandonment as a resource of enforcement; of the extent to which it is employed; and finally of its legal and ethical aspects.

Originally, the term boycott denoted social ostracism.³ While still employed extensively to characterize expulsion from social intercourse, the term is now most frequently applied to certain forms of economic or industrial pressure, and more particularly to the economic pressure exerted by the members of labor organizations. The boycotting carried on by trade unions has been variously defined.⁴ By

³ For a detailed description of the origin of the term boycott, see H. W. Laidler, *Boycotts and the Labor Struggle*, p. 23. See also R. B. O'Brien, *Life of Charles Stewart Parnell*, p. 236 ff.

⁴ The difficulties encountered in properly defining the boycott are well described by Fritz Kestner: "From the standpoint of judicial declarations the boycott is a chameleon that is impossible of definition. In its historical origin it is not concerned with the accomplishment of a demand but is an act of vengeance, social punishment. Soon the term boycott indicated the collective withdrawal of the labor force from an employer. It then became necessary to distinguish the boycott from the strike; the strike was defined as the deliberate refusal to work for an employer and the boycott as the deliberate refusal to buy from him. At the same time boycotting also referred to the attempts of labor organizations to obstruct approaches to industrial establishments; and finally the term was applied to every manner of warfare between employer and employees that was not a direct strike.

"With the growth of industrial organization, the rules that were made within the labor unions and the employers' associations

some writers coercion of disinterested parties is considered an essential element of this trade-union device. Thus Dr. W. A. Martin,⁵ deriving his definition from various judicial opinions, defines the boycott as "a combination to cause a loss to one person by coercing others against their will, to withdraw from him their beneficial business intercourse, by threats, that unless those others do so, the combination will cause similar loss to them." While not placing so great an emphasis on the element of coercion, Dr. T. S. Adams and Dr. H. L. Sumner⁶ also consider the support of a disinterested party as a *sine qua non* of the boycott. "The boycott, as used in modern labor disputes," they write, "may be defined as a combination to suspend dealings with another party, and to persuade or coerce others to suspend dealings, in order to force this party to comply with some demand, or to punish him for non-compliance in the past."

An analysis of certain forms of pressure to which the term boycott is commonly applied would indicate that neither of the above elements is an essential and universal attribute of the boycott. To use a concrete illustration, when the members of a local union of bakers, who have been locked out by the master bakers of the community, combine to withdraw their patronage from the bakeries, their action is ordinarily regarded as constituting a boycott upon the unfair employers and would be so termed. Yet the act is marked neither by coercion nor by the support of a third party; it is merely a concerted withdrawal of patronage. Similarly Sidney and Beatrice Webb⁷ speak of the "boycott of non-unionists," the term being used to describe the device of the closed shop, or the refusal of union members to work with non-unionists, and the consequent inability of the non-

against outsiders were soon called boycotts. As soon as the same methods which these organizations employed in labor disputes, as, for example, restricting the supply of raw materials, the diversion of patronage etc., were also adopted by the cartels, it became customary to designate all of the weapons of the cartels against outsiders as boycotts" (*Der Organisationszwang*, pp. 344-345).

⁵ *The Modern Law of Labor Unions*, pp. 103-104.

⁶ *Labor Problems*, pp. 176, 196.

⁷ *Industrial Democracy*, vol. 1, p. 215. See also index, p. 904.

union workman to obtain work in a union shop and of the union employer to engage the services of a non-union workman. Here, however, there may be an element of coercion, since the closed shop is often not voluntarily adopted by the employer but is forced upon him by the union. Whether coercion is present in this second illustration or not, it is possible to detect in these two totally dissimilar examples of the boycott a characteristic which will be found to be common to all forms of pressure that are given that name. This common characteristic is the restriction of market; in one case possibly supplemented by the coercion of a third party, the employer, and in the other free from coercion or persuasion. Thus the purpose of the first boycott is to restrict the selling market of the master bakers; the second limits the market of the non-union workman to non-union shops, and likewise limits the labor market of the employer to union workmen. The boycott may, therefore, be defined as a combination formed for the purpose of restricting the markets of an individual or group of individuals.

Thus defined, the boycott of course includes many forms of pressure exerted by both labor organizations and other types of industrial combinations, which because of the presence of certain peculiar characteristics have received distinguishing names. The blacklist, for instance, which is used by combinations of employers, is a boycott upon the blacklisted laborer, since his field of employment is restricted to the extent that he is unable to receive employment from the manufacturers who subscribe to the blacklist.⁸ The

⁸ The various forms of blacklisting which are employed by industrial combinations, not against workmen but against firms not members of the combination, contain a similar element of boycott. Thus the Michigan Retail Lumber Dealers' Association forbade "any wholesaler or manufacturer, dealer or his agent" to sell "lumber, sash, doors or blinds for building purposes to any person not a regular dealer" (W. S. Stevens, *Industrial Combinations and Trusts*, p. 193). This rule, of course, constituted a boycott by the combination in that it limited the market for materials of those persons who are not "regular dealers." Similar instances of such industrial or trade boycotts can be easily multiplied. See, for example, *The Quarry Workers' Journal*, February, 1910, p. 4; A. C. Pigou, *Wealth and Welfare*, p. 258; W. S. Stevens, *Industrial Combinations*, p. 145.

strike, likewise, constitutes a boycott of the employer by restricting his market for labor; and if the activity of pickets in keeping strike-breakers from the plant be noted, the element of boycott in the strike is still more clearly shown. The identity of the labor boycott and the closed shop has already been discussed. In spite of the logical desirability of assigning to all such forms of pressure the term boycott, the chronological priority of the terms strike, closed shop, and blacklist, not to speak of the peculiar connotations of each, would make the substitution a source of confusion rather than of clearness. In order, therefore, so to delimit this study as not to include those forms of the boycott which are in everyday speech called strikes, blacklists, and so on, the term boycott will be used to describe the efforts of labor combinations to restrict the markets of employers in the purchase and sale of economic goods, whether these goods be raw materials, materials in a partial state of completion, or finished products about to be sold to the ultimate consumer.

The classification of boycotts which is most commonly used is that which divides them into primary and secondary. The primary boycott has been defined as that form in which "the action is directly against the offending employer, the members of the organization simply withholding their patronage as laborers or purchasers, and inducing their fellows to do the same."⁹ Thus if the Metal Polishers' Union is involved in a dispute with the Buck's Stove and Range Company and the members of the union combine to withdraw their patronage from that firm, their action constitutes a primary boycott. If, furthermore, the boycott of the Metal Polishers is endorsed by the American Federation of Labor and the support of the members of affiliated unions is enlisted, the boycott is still primary. If, however, a boycott is imposed upon those retail merchants who are

⁹ L. D. Clark, *The Law of the Employment of Labor*, p. 289. See also Adams and Sumner, p. 197; B. Wyman, *The Control of the Market*, p. 69.

customers of the Buck's Stove and Range Company, the boycott becomes a secondary one, since injury is inflicted upon persons not concerned with the original dispute with a view to forcing them to withdraw their patronage from the boycotted manufacturer. A secondary boycott may, therefore, be defined as a combination to withdraw patronage from a person in order to force that person in turn to withdraw his patronage from that individual or firm with whom the union was primarily at odds.

Boycotts have also been noted which are imposed upon persons who are still further removed from the original dispute. In the fur and felt hat industry, for example, the manufacturer frequently sells the finished product to a jobber and he in turn to a retail dealer. Here a boycott that is first imposed upon the manufacturer usually extends to the jobber and then to the retailer. The boycott upon the retail dealer may be described as a tertiary boycott. In other words, the boycott upon the manufacturer is primary; that on the jobber, secondary; and that on the retail merchant, tertiary. To secondary and tertiary boycotts, or in fact to all that extend to persons not concerned in the original dispute, the term compound boycott has been applied.¹⁰

For the basis of the various classifications of the boycott made by different writers other criteria than the relation of the boycotted person to the original disputants have been employed. The division, for example, into direct and indirect boycotts,¹¹ where the direct boycott consists in the publication in an unfair list of the name of the offending employer and the indirect boycott denotes the methods employed for the advertising of union employers by such de-

¹⁰ Report of U. S. Industrial Commission, 1900, vol. vii, p. 119. L. D. Clark (*The Law of the Employment of Labor*, p. 290) and Adams and Sumner (p. 197) consider the expression secondary boycott as synonymous with compound boycott. It is perhaps better to use the expression compound boycott to describe boycotts against all persons not involved in the original dispute, whether those boycotts be secondary, tertiary or even of a higher order, whereas the primary boycott denotes that simple form in which the boycott is imposed directly upon the offending employer.

¹¹ G. Schwittau, *Die Formen des wirtschaftlichen Kampfes*, p. 237.

vices as the union label and the white and fair lists, is based upon the method of executing the boycott. Still another classification is descriptive of the manner in which the boycotted party is excluded from industrial intercourse. Thus the consumption-good boycott (*Konsumtionsboykott*) is that which prevents the sale of the products of the boycotted firm; the material-boycott (*Lieferungsboykott*) cuts off the supply of raw materials; and the complete boycott (*Totalboykott*) constitutes a complete blockade of the boycotted establishment and bars the owners from all industrial intercourse.¹² In this study, while in one form or another all of the foregoing classifications are employed, emphasis will be placed upon the distinctions arising from the character of the boycotted goods and from the character of the boycotters with particular regard to their positions in industry and to their state of organization, rather than upon the other criteria.

¹² E. Liechti, *Die Verrufserklärung im modernen Erwerbsleben, speziell Boykott und Arbeitsperre*, p. 39.

CHAPTER II

THE HISTORY OF THE BOYCOTT

The frequent use of the boycott in past as well as in contemporary history and analogies between the earlier and more recent forms of the boycott and between its industrial and social manifestations have been often indicated. Thus, James Fitzjames Stephen, writing in the *Nineteenth Century* in December, 1886, notes that "boycotting is only a modern application of the old Roman 'Ignis et aquae interdictio' and is very like the weapons of excommunication and interdict by which the Church of Rome was able practically to govern a great part of the world."¹ R. T. Ely describes the boycott imposed in 1327 by the citizens of Canterbury, England, on the monks of Christ's church, wherein they determine not to inhabit the prior's houses nor to "buy, sell or exchange drinks or victuals with the monastery."² A more recent writer states that the practice of boycotting, defined in its widest sense, "has been resorted to since the dawn of history. The Jews shunned the Samaritans; the Pharisees boycotted the Publicans, as far as social intercourse was concerned."³ Its use is, also, to be distinguished in history in connection with many religious and political episodes. Finally, contributors to the journals of labor unions cite the boycotts imposed by the American colonists on British tea,⁴ the boycotts on slave-made products of the abolitionists,

¹ On the Suppression of Boycotting, p. 774.

² The Labor Movement in America, p. 297.

³ Laidler, p. 27.

⁴ Attacks on the boycott by Senator Spooner and by Presidents Eliot and Hadley drew from the *New York Call* a defense of the boycott in which was cited the pre-revolutionary boycott upon tea. "Without any sanction of the law . . . they [the American Colonists] organized societies whose members were pledged not to buy a pound of tea or any other article on which duty had been paid" (*The Carpenter*, January, 1909, p. 17).

and the quasi-boycotts waged in this generation through such agencies as temperance societies and consumers' leagues.

Other writers, however, while admitting points of similarity between the modern manifestations of the boycott and these early forms of social and religious ostracism, have sought to develop a more rational line of evolution by tracing the contemporary boycott back to earlier forms of economic or industrial pressure. Accordingly, such writers as von Waltershausen and Liechti describe as historical forerunners of the boycott various rules and practices of the guilds; and they use as illustration the punishment inflicted upon both masters and journeymen for transgressions against guild rules. If a master commits the transgression, "no journeyman may work for him; he may not be present at guild meetings; on the market he must not stand near the other masters, but must sell his wares at a distance of three paces; if, however, the journeyman has committed the violation, no other journeyman may work with him; if he wishes to ply his trade in other places, he is pursued from place to place by circulars" announcing to the masters and journeymen his misdemeanor; he is, therefore, unable to obtain work anywhere within the jurisdiction of the guild.⁵

Although some resemblances can be detected between the practices of modern labor organizations and those of the guilds, the essential difference between the constitution of the trade union and the guild makes the comparison gratuitous. The guild was composed of both masters and journeymen, and exercised, therefore, disciplinary power over both. Frequently, also, the decrees and rules of the mediaeval guild had governmental sanction and support. The modern trade union, on the other hand, is composed only of the employed. Consequently, the rules and regulations of trade unions, while not unlike those of the guilds in form and content, differ from them in that the employers have no

⁵ S. von Waltershausen, *Die Nordamerikanischen Gewerkschaften*, pp. 238, 239; Liechti, pp. 8, 9.

part in their formulation and cannot be bound by their terms. Such devices, accordingly, as the strike, the boycott, and the closed shop are not as in the case of the guilds, measures taken by an organization to enforce discipline among its members, but represent the weapons used by an organization to force compliance with its demands from non-members, who are in some cases employers and in others non-union workmen.

As employed, then, by the labor organizations of to-day, the boycott is far from constituting, as did many of the earlier forms of religious and social ostracism, a spontaneous revulsion of feeling in large masses of the people against a certain individual, with the result that they determine to cease all intercourse with him, social as well as economic, but it represents in most cases only the deliberate exercise by the officers and members of the union of a policy designed to blockade the establishments of hostile employers by interfering with their purchase of raw materials and their sale of finished products. To obtain a correct idea, therefore, of the factors responsible for the emergence and frequent use of the boycott in the industrial disputes of the last century, it is necessary to survey briefly the principles underlying the methods employed by labor organizations in forcing concessions from employers.

The essence of trade-union success is its ability to control the labor supply in particular trades. If this control is adequate, the union is able to call out its members on strike, to prevent the strikers from being replaced by non-unionists by the employment in the dispute of such devices as the joint-closed shop and the extended-closed shop,⁶ and consequently

⁶ Where the joint-closed shop is in force members of different trades in the same shop will strike when an attempt is made to replace the members of one union by non-union workmen. Under the extended-closed shop members of the same trade union, working for employers who have several establishments in the same city or in several cities, will strike when their fellow-members employed in one of these shops have been succeeded by scabs. Thus, should a building contractor employ non-union carpenters on one of his building operations in New York City, a strike on that job of painters, hod-carriers, tile layers, and of twenty or more other

to close down an employer's establishment until he yields to their demands. Furthermore, in times of industrial peace the union often succeeds in preventing the employer from building up in his establishment a reserve army of non-unionists by the adoption and rigid enforcement of various closed-shop rules, which are designed to shut off the employment in organized shops of non-union workmen. Control of the labor supply in an industry, however, presupposes the power of union officials to organize the majority of the workmen in that industry, and this organization is not always possible. When, therefore, the ordinary methods of organization have failed, or are at the outset seen to be inoperative, the union must devise a supplementary resource. This resource has been, in this country, the boycott of the products of unfair firms.

In consonance with this view it has been stated that "for the enforcement upon employers of the union trade regulations, the Printers rely upon two resources: (a) the control by the union of the workmen in the trade, (b) the power to divert patronage from employers who do not observe the regulations."⁷ And what is true of the Printers in this respect has been true in varying degrees of the great majority of American and of a few foreign labor organizations. The inability of the unions to regulate the conditions of manufacture of a product has led to efforts to prevent its sale. From this general analysis it follows that the boycott should emerge under those conditions (1) where organization of the labor force is impossible and (2) where organization is fraught with such difficulties as to make it unlikely.

(1) In modern industry practically the only workman

unions would be precipitated. Similarly, should the Fuller Construction Company, for example, discharge union bricklayers in San Francisco, the bricklayers' and masons' union would call out on strike its members employed by that same company in other cities. For a fuller description of these forms of the closed shop see F. T. Stockton. "The Closed Shop in American Trade Unions," in Johns Hopkins University Studies, ser. xxix, no. 3, chs. iv, v.

⁷G. E. Barnett, "The Printers: A Study in American Trade Unionism," in American Economic Association Quarterly, third series, vol. x, no. 3, p. 259.

whom it is totally impossible to organize is the convict laborer. By reason of his confinement under the absolute control of prison authorities as regards all of his activities, he is not susceptible to trade-union pressure. His wages, his hours of labor, and his working conditions are determined not by individual bargaining, but by state or municipal contracts in the making of which he has no voice. Working, therefore, as he does for low wages in active competition with the more highly paid free labor, he has always been recognized as constituting a menace to the prosperity of union members. As a result, either in self-defense or in sympathy with the workmen in other trades many labor organizations early in their history have declared boycotts upon prison-made products. Unions, for example, like the Coopers, the Granite Cutters, the Stone Cutters, the Broom Makers, and the Garment Workers, whose products have always come into direct competition with the products of prison labor, have for years carried on continuous boycotts upon prison products.

(2) Organization is difficult or unlikely when the employer is strong enough to resist union attempts to organize his workmen and when the employees are of such a character as not to desire membership in a labor union. Thus, for example, in 1887 the Knights of Labor found it impossible to organize the workmen of a large steel plant in Pittsburgh because the employers, by an elaborate system of espionage, were able to detect those workmen who had been converted to unionism and would dismiss them as soon as they joined the Order. The Amalgamated Association of Iron and Steel Workers had also made similar unsuccessful attempts to organize the plant. As a consequence, a boycott was imposed by the Knights of Labor on the product of the company.³ Occasionally the resistance of an employer to

³ Proceedings of the Eleventh Regular Session of the General Assembly of the Knights of Labor, 1887, pp. 1669, 1794. A similar situation obtained in the efforts of the metal polishers' union to organize the National Sewing Machine Company. For nine years this firm had been able to prevent the organization of its workmen by having the "foremen of all departments of the company dis-

the efforts of labor unions to organize his employees is increased by his membership in an employers' association. The Upholsterers' International Union, for example, tried to organize the upholsterers, carpet workers, and drapers in the employ of several department and dry-goods stores in New York. The owners of these stores were combined in an employers' association that was opposed to the organization of these workingmen. The union therefore requested the imposition of a boycott on Macy, Siegel-Cooper, and other employers who were most prominent in the deliberations of the employers' association.⁹

Furthermore, where the labor organizations are confronted not only by hostile employers, but also by laborers who are themselves indifferent or opposed to organization, the placing of a boycott is inevitable. This difficulty is encountered in the organization of woman and child labor, on the one hand, and of unskilled laborers in the so-called open shops, on the other. The argument often advanced by the carpenters to justify their boycott of non-union trim is that the women and children working in the wood mills cannot, because of their ignorance and indifference, be organized into effective labor organizations that could be expected to strike for improved working conditions and higher wages. A former secretary of the New York District Council of the Carpenters, writing of the difficulties which confront organized labor in the open shop, states that organized labor "has come to many citadels which cannot be carried by the assault of strike. These are 'open-shops.' Parleying with those within has failed. New weapons must be brought into play and a siege begun."¹⁰ And the most effective of the new weapons is the boycott.

charge men as soon as they join a labor union." Finally, therefore, the company was boycotted (Proceedings of the Twenty-third Annual Convention of the American Federation of Labor, 1903, p. 106).

⁹ Proceedings of the Twenty-third Annual Convention of the American Federation of Labor, 1903, p. 125.

¹⁰ E. H. Neal, "The Open Shop," North American Review, May, 1912, p. 618.

Most boycotts, however, are imposed to supplement long drawn out and apparently unsuccessful strikes. In practically every strike that is not won during the first few weeks, the unionists, fearful lest it be doomed to failure, seek to exert additional pressure upon the employer by boycotting him. The Garment Workers entered in 1895 upon a strike against the Rochester Clothing Manufacturers; two years later, the strike having by that time become hopeless, the convention of the union decided to wage a vigorous boycott against the manufacturers and in that way bring them to terms.¹¹ In his report to the convention of 1896 the secretary of the American Federation of Labor writes that "the history of strikes and lockouts of late years proves they are not won, in the great majority of cases, because of the lack of scabs."¹² but that the boycott is a most important element in determining the issue.¹³

The earliest instances of boycott in the United States seem to have been forms of the sympathetic strike or the boycott on materials. The general strike of the New York cordwainers in 1809 was caused by the fact that the employers "originally involved" had attempted to have their goods manufactured in other shops, and had, consequently, precipitated strikes among the workmen of other employers, who refused to contribute to the production of unfair goods.¹⁴ In 1827 the journeymen tailors of Philadelphia struck against several master tailors. When the master tailors later attempted to have their work done in other

¹¹ Report of the General Secretary to the Sixth General Convention of the United Garment Workers, 1897, in the *Garment Worker*, January, 1898, pp. 4-14.

¹² Proceedings, p. 25.

¹³ "Es [the boycott] erscheint als eine Ergänzung des Strikes" (v. Waltershausen, "Boycotten, ein neues Kampfmittel der Amerikanischen Werkvereine," in *Jahrbücher für National Ökonomie u. Statistik*, vol. 45, p. 5); "The industrial boycott almost invariably but not always or necessarily, is a phase of the strike or lockout, but it sometimes exists apart from either" (J. Burnett, "The Boycott as an Element in Trade Disputes," in *Economic Journal*, vol. i, p. 164).

¹⁴ Hall, "Sympathetic Strikes and Sympathetic Lockouts," in *Columbia Studies in History, Economics and Public Law*, vol. x, p. 35.

shops, the strikers succeeded in persuading the journeymen there employed to refuse to do any work while the orders of the unfair firms were being received.¹⁵ Within the category of boycotts on materials falls the action taken by the journeymen stone cutters of New York, when in 1830 they imposed a boycott on convict-cut stone. "Most of the stone cutters," they said, "have entered into a voluntary agreement to refrain from working stone from the states' prisons, and deputations have been sent to those who continued to work such stone."¹⁶

Apparently one of the first instances of the boycott on commodities, where the appeal was to the workman not as a producer but as a consumer, was the boycott imposed in Baltimore in 1833 at a meeting of "the citizens generally" upon master hatters who had combined to cut the wages of their journeymen.¹⁷ In October of the same year the Association of Printers of New York decided, at the suggestion of an employer, to publish the "names of all employing printers who do not pay the scale of prices." Similar lists were published in one form or another until April, 1840. For several months in 1836 a fair, as well as an unfair, list was published in the *Union and Transcript*, a penny daily labor paper, published by the Printers' Union during a few months of that year. In April, 1840, however, the union was sued for libel, and the publication of the unfair list ceased.¹⁸ Although the printing of these lists may have been designed to divert patronage from unfair employers, it is not entirely clear that the prime motive for their advertisement was not to keep union laborers from working for these employers rather than to persuade consumers to withdraw their patronage.

¹⁵ Third Annual Report of the United States Commissioner of Labor, p. 1122.

¹⁶ *New York Sentinel and Workingman's Advocate*, June 30, 1830, p. 3.

¹⁷ J. R. Commons and H. L. Sumner, *Documentary History of American Industrial Society*, vol. vi, p. 100.

¹⁸ G. A. Stevens, "New York Typographical Union No. 6," in *Annual Report, New York Bureau of Labor Statistics*, 1911, Part I, pp. 145, 153.

In 1850 the boycott again appeared in New York City in connection with the labor movement that resulted in the organization of many of the workingmen in that city. Conspicuous in this movement to organize the laborers of New York were the tailors, who in March, 1850, formed the Journeymen Tailors' Union. In the summer of that year a central association called the Industrial Congress and composed of representatives of the unions was established. At a session of this Congress on July 30 a resolution was adopted boycotting the clothing firms that were antagonistic to the Tailors' Union. The resolution, which was introduced by the masons, provided that, "as tailors of New York are on strike for wages, we the Industrial Congress will not patronize any store or shop that does not pay the proper prices to their workmen, and that we report the same to our respective societies. Be it further resolved that the tailors be requested to publish the names and numbers of such as do not pay the prices demanded."¹⁹

These comparatively early instances of the boycott are of small importance in the American Labor movement. Imposed sporadically when organization succeeded in getting a foothold in different parts of the country and discarded when it collapsed, the boycott did not become an effective and important weapon of labor unions until 1880. But from that year to the present time, first under the Knights of Labor and then under the American Federation of Labor, it has had an almost continuous history of successful employment as an acknowledged and a universal method of trade-union pressure.

Almost without warning the boycott suddenly emerged in 1880 to become for the next ten or fifteen years the most effective weapon of unionism. There was no object so mean and no person so exalted as to escape its power. Side by side, with equal prominence, the Knights of Labor boycotted clothing manufacturers and their draymen, insignifi-

¹⁹ G. A. Stevens, pp. 1-3, 10, 11.

cant country grocers and presidential candidates, insipid periodicals and the currency of a nation, our national bank-notes.²⁰ Although no statement can be found to the effect that it was the policy of the Order to employ the boycott as its principal means of aggression, and although the resolution providing that the Order "adopt a general system of boycotting instead of strikes" was rejected by the convention of 1884, there can be little doubt that in actual practice the Knights of Labor were primarily a boycotting organization. Disregarding even the numerous instances of actual boycotts, the very tone of their articles and their attitude of threatened withdrawal of support or patronage from almost all of their opponents attests the existence of a definite boycotting policy to which all other resources were subsidiary.

The spectacular appearance at this time of the boycott and its subsequent popularity may be ascribed to the influence of several factors. Its "sudden emergence in 1880 as an important means of enforcing the demands of the unions upon recalcitrant employers" was primarily "due to the solidarity given the trade union movement by the growth of the Knights of Labor."²¹ Furthermore, it was perhaps true of the period immediately before and after 1880 that trade-union sentiments had not as yet been disseminated to a marked extent and that the organization of labor had to be carried on for the most part among workmen who, like many of the present-day immigrant laborers, had not yet learned the desirability of continuous membership in labor organizations. To the large numbers of unskilled workmen who were now for the first time experiencing the advantages and disadvantages of organization, the monthly or weekly payment of dues, through which alone could be built up the war funds indispensable for the effective management of strikes, was at once new and dis-

²⁰ Address of the Grand Master Workman to the Nineteenth Regular Session of the General Assembly of the Knights of Labor, 1895, pp. 4, 104.

²¹ Barnett, *The Printers*, p. 269.

tasteful. With funds insufficient for the universal payment of strike benefits and inadequate to provide the expenses of transporting scabs from the seat of strikes to places where there were no conflicts in progress, it is small wonder that the boycott was often invoked to supplement the unsuccessful strike. In addition to these internal factors favorable to the use of the boycott, it had become easier, because of the growing concentration of population in cities and the increasing division of labor, to replace strikers with non-union workmen, thus again rendering more unfavorable the chances for successful strikes.²² Appearing, therefore, in 1879 and 1880 as a compact labor organization, composed in the main of workmen ignorant of the difficulties and necessities of organization; not oversupplied with funds; finding it necessary to employ spectacular and effective, but cheap, methods of aggression; controlling, however, a not insignificant purchasing power, the Knights of Labor immediately seized in 1880 upon the boycott as a unique and logical source of strength.

Boycotting under the Knights of Labor falls roughly into three periods. The first period from the beginning to 1885 was one of indiscriminate, unregulated, local boycotting. The second from 1885 to about 1892 was characterized by the central control and careful execution of the boycott; and the third period was marked by the extension of the boycott, still under a central but much weakened control, to new fields of industrial warfare.

(1) Members of labor organizations generally hold that it is an individual's right to use his patronage as he sees fit; it follows, they contend, that any number of individuals may collectively agree to withdraw their patronage from hostile firms. The right to withdraw patronage and to request others to withdraw it is, therefore, a species of inalienable right which workingmen are exceedingly reluctant to relinquish to the control of a distant central office.

²² v. Waltershausen, *Die Nordamerikanischen Gewerkschaften*, p. 241.

Such was apparently the prevailing opinion in the rank and file of the Order in the first few years of its history. Accordingly, practically all boycotts emanated from the local and district assemblies, while their enforcement and regulation were left in the same hands. There was, to be sure, the general provision adopted in 1882 that "no firm or individual employer shall be subject to general boycotting without the consent of the majority of the executive board." The general terms of this provision, however; its failure to define general boycotting, and the fact that the members of the Order did not yet fully comprehend the desirability of a restricted and regulated system of boycott, rendered this provision valueless. Local and district assemblies boycotted when they pleased and what they pleased; firms fair to one local assembly would be boycotted by a neighboring assembly.

Such a situation elicited from the grand master workman before the assembly of 1885 the recommendation that, inasmuch as the general assembly had not heretofore enacted adequate legislation for the regulation of boycotting throughout the Order, "the power to decide upon the wisdom of embarking in a boycotting crusade should be placed in the hands of the Executive Board." This recommendation met with considerable opposition on the part of the local assemblies. To them the organization on the spot was most competent to judge when and where a boycott should be levied. Accordingly, the proposed amendment to the constitution providing that "only the Executive Board have the power to issue a boycott" was rejected. Nevertheless, this period of unrestrained local boycotting was brought to a close by the adoption at the same convention of two rules: one granting local, district, and state assemblies the right to initiate boycotts that did not effect other localities; the second providing that whenever any local or district assembly desired to initiate a boycott that might affect other localities, "the facts must be gathered and presented to the Executive Board which after a careful examination shall have the power to institute a general boycott."

(2) In 1885, then, the Knights of Labor entered upon a period of boycotting characterized by the subordination of local to national authorities in the matter of control. The first boycott emanating directly from the general executive board and operating throughout the Order was in that year imposed upon the Dueber Company, a large watchcase manufactory of Newport, Kentucky.²³ With such vigor and persistency was this boycott waged that all doubts that may have previously existed as to the desirability of a system of centrally imposed boycotting were at once dispelled. Indeed, so systematically were future general boycotts operated that the casual correspondence of the previous period was succeeded by such a stream of letters and instructions that the governmental mechanism of the Order was extended in 1887 by the establishment of a "Boycotting Department."

In this period, too, were perfected the details involved in the announcement of boycotts, in the tracing of boycotted goods, and in the local enforcement of the boycott, matters in which the Knights attained a degree of skill that has not since been surpassed. The articles published in their journals advising members that hostilities with certain firms had been begun and that a boycott upon their products was in order were masterpieces of that form of persuasive composition; facts concerning the sources and destinations of unfair commodities were often printed in the journal with the most minute details. Nor was this condition of central control, with its ability to concentrate the forces of the Order upon single firms and its greater efficiency in management, without its fruits. On the capitulation of the Liggett and Meyers Tobacco Company in June, 1893, following a six years' boycott, the editor of the journal asserted that "up to date the Knights of Labor had never lost a boycott; and powerful and wealthy as an enemy may be, it is only a question of time when the end must come either in bankruptcy or surrender,"²⁴ a judgment which, while

²³ Proceedings, 1885, p. 78.

²⁴ Journal of the Knights of Labor, June 8, 1893, p. 1.

perhaps not to be taken literally, contained more than a modicum of truth.

(3) From 1892 to 1900 the Order of the Knights of Labor was in a moribund state. Torn by internal dissensions following the defeat of Powderly as grand master workman, and further weakened by the vigorous attacks of its rival, the American Federation of Labor, the Order, despite its frequent boasts of greater strength and increased success, was rapidly declining in membership and in power. Its proceedings had become a mass of criminations and recriminations, its journals the forum for the propagation and discussion of political and social panaceas. Although boycotting notices were published during this period, they were not so extensive as in the period before and were sporadic rather than continuous in appearance. But what the boycott against the customary foes lacked in vigor was amply compensated for by the imposition of boycotts on the products of new adversaries, the members of the trade unions now affiliated with the American Federation of Labor.

Early in its history the relation of the Knights of Labor to existing trade organizations had been one of tolerance, perhaps induced by the belief that the trade organization was as likely to be useful to them as they were to be useful to it. Unless, therefore, the trade unions were antagonistic to the Order, it was inclined to be friendly. In conformity with this spirit, the Knights had adopted in 1885, in connection with other rules designed to regulate the use of the boycott, the principle that when the boycott of a trade organization was endorsed by the district assembly, all the local assemblies within the jurisdiction of the assembly must also endorse it and take proper measures to have their members "strictly adhere" to it.

This peaceful state of affairs was not to endure long. Probably during the whole history of the Knights of Labor, and certainly as early as 1884,²⁶ there were occasional disputes between trade organizations and the Knights. In the

²⁶ Proceedings, 1884, p. 642.

main these disputes arose from the circumstance of the competition between two labor organizations for the control of workingmen and their positions. Thus, the Knights of Labor, which contained in its organization local assemblies of iron molders, boycotted in 1888 the Fuller, Warren Stove Company; at the same time the journal of the Iron Molders' Union contained an article designating that company as a friend of organized labor.²⁶ The inevitable result of such a situation was the appearance of signs of hostility in both organizations; in the Iron Molders because the boycott harmed an employer who from their standpoint was fair, and in the Knights because the Iron Molders, by proclaiming the fairness of the boycotted stove manufacturer, succeeded in destroying the effectiveness of their boycott.

An analogous situation arose when either the trade union or the Knights of Labor would adopt a label, which would be for a time the only label of organized labor to be used on that commodity. In the meanwhile another organization would spring up, adopt a label, and place it on the same commodity, and in consequence the labels would become competitors and their sponsors antagonists. Out of such a situation arose the dispute between the Knights of Labor and the Cigar Makers' Union. In February, 1884, the general executive board of the Knights had adopted a label which was almost immediately used by certain assemblies of cigar makers; and "early in 1886 the Cigar Makers' International Union protested to the Knights of Labor that assemblies of cigar makers had given 'white labels' to manufacturers in whose shops union cigar makers were on a strike."²⁷ In that same year the Cigar Makers' International Union sent men and circulars through the Order, requesting the members "to boycott all goods except those bearing the International blue label," and charging that the grand master workman and the rest of the general executive board had "cooperated in the organization of scabs

²⁶ Journal of United Labor, April 21, 1888, p. 2614.

²⁷ E. R. Spedden, "The Trade Union Label," in Johns Hopkins University Studies, ser. xxviii, no. 2, pp. 17, 19.

into the Order."²⁸ The dispute culminated in an edict by the general assembly of the Knights in 1886 requiring all cigar makers who were members of the Knights of Labor to withdraw from the Cigar Makers' Union.²⁹ After that the Cigar Makers, now secretly and now openly, boycotted cigars bearing the label of the Knights of Labor, and the latter retaliated by boycotting goods which bore the blue label of the Cigar Makers.

The experience of the Knights of Labor with the Cigar Makers' Union, with the exception of the complications due to the use of two labels, was repeated after 1890 with even greater disaster to the Order. In most cases the trade unions of Garment Workers and Brewery Workmen, aided and encouraged by the American Federation of Labor, led the fight against the Knights. For example, when a clothing firm in 1896 replaced cutters belonging to the Knights of Labor with members of the Garment Workers' Union, the Knights of Labor imposed a boycott on the product of the firm.³⁰ Again, in the following year the Brewery Workmen's Union boycotted a Rochester brewery because that company employed members of the Knights of Labor; the Knights responded by boycotting those breweries which employed members of the Brewery Workmen's Union.³¹ With a view to a peaceful adjustment of the disputes between these organizations a harmony conference, composed of representatives from the Knights of Labor and the trade organizations, was held in 1894. The conference, however, recommended the withdrawal of the Knights in practically all industries where trade unions were organized. The representatives of the Knights of Labor opposed the report, and the conference came to naught.³² These boycotts and counter-boycotts continued to be imposed until about 1900,

²⁸ Proceedings of the Tenth Regular Session of the General Assembly of the Knights of Labor, 1886, p. 137.

²⁹ Spedden, p. 19.

³⁰ Journal of the Knights of Labor, April 9, 1896, p. 2.

³¹ Ibid., April 29, 1897, p. 1.

³² American Federationist, July, 1894, p. 108.

when the internal warfare ceased with the total collapse of the Knights of Labor movement.

The series of railroad strikes or boycotts carried on by the Knights of Labor and by the railway brotherhoods represented important episodes in the history of the boycott between 1885 and 1895. One of the earliest of these was the strike on the Union Pacific in 1885, when the Knights of Labor refused to assist in moving any of the rolling-stock of the Wabash System. Similar boycotts on rolling-stock were imposed from time to time. In 1894 this form of boycott reached its climax in the famous strike of the American Railway Union. This union was an organization of the employees of all branches of the railway service which, under the leadership of Debs, had succeeded the "Supreme Council of the United Order of Railway Employees, a loose federation of railway unions, disbanded in June, 1892."⁸³ When, in the summer of 1894, certain employees of the Pullman Palace Car Company went on strike, the "American Railway Union determined to support the strikers, and for this purpose ordered its members to refuse to work upon any train to which a Pullman car was attached. As nearly all the railroads centering at Chicago were under contract with the Pullman Company to draw its sleeping cars and parlor cars, a conflict immediately resulted between the railroads and their employees, and a strike of vast proportions among train hands followed."⁸⁴ With the loss of this boycott and the imprisonment of Debs and other officers of the union by the United States authorities, the union soon disintegrated, and the railroad boycott

⁸³ W. Kirk, "National Labor Federations in the United States," in *Johns Hopkins University Studies*, ser. xxiv, nos. 9-10, p. 124.

⁸⁴ W. H. Dunbar, "Government by Injunction," in *Economic Studies of the American Economic Association*, vol. iii, no. 1, p. 14. The Knights of Labor supported the boycott of the American Railway Union by notifying the travelling public that those who patronized Pullman coaches would be boycotted by the Order (*Journal of the Knights of Labor*, July 5, 1894, p. 1). For a more detailed description of the Pullman boycott, see Laidler, p. 100.

never again attained a conspicuous position in the history of the boycotts of American labor organizations.

From 1881 to 1890 the American Federation of Labor played an unimportant role as a boycotting agency, and was, indeed, overshadowed in all respects by the activities of the Knights of Labor. After 1890, in conjunction with several of the larger national unions, it assumed charge of the campaign against the Knights that brought about the defeat of that organization. The boycotting life of the American Federation of Labor can be conveniently dated from the practical disappearance about 1895 of the Knights of Labor as a factor in the American labor movement. It is, of course, true that the American Federation of Labor boycotted before 1895 and that the Knights of Labor continued to live and to boycott for a few years after 1895. That year, however, marks approximately the turning-point in the fortunes of the two organizations; by the middle of the decade the supremacy of the American Federation of Labor was definitely asserted, and it was left free to proceed against new foes.

The history of the boycott under the American Federation of Labor is in reality a history of the boycott as employed by its constituent national unions. The importance of the American Federation of Labor as a boycotting agency has often been overestimated because of the failure to observe that the actual waging of the boycotts, with the exception of the advertisement in the *American Federationist*, rests with the unions themselves. Nor does the American Federation of Labor, beyond some slight control over the central labor unions and its ability to restrict the publication of names on its "We Don't Patronize" list, possess much power in regulating the placing of boycotts by the national unions.

Even as early as the eighties, before the American Federation of Labor was in existence, such unions as the Brewery Workmen and the Typographical Union carried on suc-

cessful boycotts. By 1890 the Brewery Workmen, with the support of the Knights of Labor, had won several important boycotts that effected the organization of large non-union plants. The history of boycotts from 1890 on has been a story of the placing by national unions of great boycotts, the facts of which were made known through the publications of the American Federation of Labor. The United Hatters, for example, from about 1896 to 1902 systematically boycotted firms unfair to the union. The Metal Polishers boycotted, among others, the National Cash Register Company and the Buck's Stove and Range Company; the Garment Workers, the firms belonging to the Rochester and Chicago Employers' Associations. The Carpenters have since 1896 been carrying on a campaign, which in effectiveness has rarely been surpassed in this country, against the use of unfair building trim. The list could be extended to include such unions as the Bakers and Confectioners, the Coopers, the Printers, the Bookbinders, and others, only a small fraction of whose boycotts have appeared on the unfair list in the *American Federationist*.

The influence of the American Federation of Labor has been exerted in inducing in its members a greater conservatism in the employment of the boycott. Practically the great majority of its legislative acts in the period from 1893 to 1908 have been designed to control the too frequent use of the boycott. At the convention of 1894 the executive council remarked "the impracticability of the indorsement of too many applications of this sort. There is too much diffusion of effort which fails to accomplish the best results."⁸⁵ Thereafter, every few years saw the adoption of new rules restricting the endorsement of boycotts. Efforts at amicable adjustment must be made first by the national union concerned and later by the executive council of the Federation; the number of unfair firms of each national union that might appear on the "We Don't Patronize" list must be limited to three; the unions whose boycotts the

⁸⁵ Proceedings of the Fourteenth Annual Convention, 1894, p. 25.

Federation has endorsed must make quarterly reports of the progress of the boycotts and of the efforts put forth in furthering them; the central labor union is not permitted to originate boycotts or to endorse boycotts without consulting the national unions whose interests are involved; efforts are made to prevent the imposition of boycotts upon firms that have somewhere in their employ union workingmen. If there are added to these formal rules the statements of union officials and members urging a greater care and conservatism in the application of the boycott, a correct idea will be had of the place of the American Federation of Labor as a boycotting agency.

These measures were adopted not for the reason that the American Federation of Labor desired to restrict the use of the boycott because it was opposed to that weapon as a method of industrial warfare, but because it foresaw as a result of its uncontrolled application a marked loss in effectiveness. In spite of the fact, however, that similar restrictive tendencies have developed to a marked degree among the national unions of the country, there has probably been between the years 1895 and 1908 a gradual absolute increase but a relative decrease in the number of boycotts in this country. Indeed, there is no reason to believe that in its broad general outlines the quantitative course of the boycott has been very different from that of the strike, with these qualifications, however, that public opposition and the interference of the courts have combined to limit significantly the frequency of boycotts.³⁰

³⁰ Strike statistics for the United States are available only until 1905. They show that there has been an increase since 1881 in the absolute number of strikes, but a slower increase, or even a decrease, in their number relatively to the growth of industry. It is to be expected that, as the number of strikes increases, the necessity for the use of the boycott should become greater and the number of boycotts should also increase. Inasmuch, however, as the boycott is for the most part employed as an auxiliary to those strikes that are of long duration and that have been apparently unsuccessful, the boycotts should in absolute frequency lag considerably behind strikes. Statistics of the average duration of strikes and the proportion of successful strikes since 1881 show marked tendencies neither of increase nor of decrease. There would,

The decision of the United States Supreme Court in February, 1908, that caused the cessation of the publication by trade unions of their unfair lists marks a turning-point in the history of the boycott. Even before that decision, to be sure, the use of this device had been hampered by legal interference. But this verdict of the highest court in the land, exposing trade unionists to the payment of immense damages, and interpreted by the legal advisers of the American Federation of Labor as precluding the advertisement thereafter of the names of unfair firms, imposed upon the boycott a much greater legal disability than it had suffered through the issue of injunctions by the state courts. Once for all, the principles were laid down as authoritative throughout the whole country by a court of the highest prestige, first, that a boycott by a labor organization on the product of a firm doing an interstate business constitutes an interference with interstate commerce, and, second, that trade unions are subject to action under the Sherman Anti-Trust Act and to the payment of damages for the use of such pressure. The effect of the decision has been undoubtedly to reduce greatly but not to eliminate entirely the use of the boycott. The labor organizations have not, however, surrendered their whole control over the purchasing power of their members, but, as is indicated by the great increase in the use of the union label since 1908, they have, at least in some trades, exercised this control in a more peaceful, if less effective manner.

The treatment has thus far been concerned with the historical development of the boycott by American labor or-

therefore, be little fluctuation in the frequency of the boycott due to these causes. On the other hand, the growing hostility of the courts in recent years must have caused an appreciable decrease in the number of boycotts. A conservative opinion would, therefore, note a slow increase in the absolute frequency of the boycott and a decrease in its relative frequency (Twenty-first Annual Report of the Commissioner of Labor on Strikes and Lockouts, 1906). See also G. G. Huebner, "The Statistical Aspect of the Strike," in Twelfth Report, Bureau of Labor Statistics, Wisconsin, 1905-1906, p. 75.

ganizations upon materials and commodities. For a long time labor unions have been imposing upon candidates for public offices political boycotts, wherein they publicly announce opposition to certain candidates and request friends and sympathizers to boycott them by voting for their opponents. Under the Knights of Labor this was a favorite form of the boycott, made possible by the existence in the large membership of the Order of a substantial "labor vote." Whenever a candidate for public office would in any way associate himself with unfair establishments or persons, or would exhibit his hostility to organized labor by publicly opposing measures which they advocated, or vice versa, he would promptly be boycotted. Thus the boycott on Blaine, carried on during his presidential campaign by the Typographical Union, with the aid of the Knights of Labor, was imposed because Blaine did not repudiate the support of the New York Tribune, a newspaper unfair to the Typographical Union.

This intense political activity of the Knights of Labor in supporting and opposing men and measures, which was later widened to include extensive political programs, contributed ultimately to their downfall. The reaction against such activity set in with the growth of the American Federation of Labor, which in its early days seems to have made little use of the political boycott. Indeed, Professor A. C. Pigou, in commenting on the supersession of the Knights of Labor by the American Federation of Labor, notes that political measures work best through localities, whereas economic pressure is exerted most freely through trades, thus explaining the greater political activity of the Knights.⁸⁷ Since 1900, however, the American Federation of Labor, finding itself and its constituent unions harassed

⁸⁷ Principles and Methods of Industrial Peace, p. 12. Kirk, also, writes: "Reference has been made to the claim repeatedly advanced that the industrial union has a strategic advantage over the trade union in bargaining and that one element in this superiority is the control exercised by a central authority over a larger and more representative body of work people in a single locality. The same causes operate to increase the effectiveness of the industrial union in political activity" (p. 146).

by injunctions and its activities greatly hindered by what it considers the anti-labor prejudices of the courts, has not hesitated to support and to advise constituent unions to support certain ameliorative measures before Congress and before state legislatures, and in addition has waged political boycotts upon public officials whose opposition to these labor measures has been notoriously bitter.³⁸ Of such a character were the vigorous boycotts launched against the candidacies of Congressmen Cannon and Littlefield, also the negative boycott on the Republican national candidates in 1908, when the American Federation of Labor offered semi-official support to the Democratic party, which had inserted into its platform an anti-injunction plank satisfactory to the labor interests. Many of the constituent unions of the American Federation of Labor also occasionally employ the political boycott; thus the Garment Workers had in their constitution a provision stating that it was the duty of all members "to refuse to vote for any political candidate regardless of party who was not friendly to the cause of labor,"³⁹—a general provision which could, when necessary, be easily particularized in time and place. Other unions such as the Western Federation of Miners and the United Brewery Workmen endeavored to swing their workmen to the support of socialistic candidates.⁴⁰ In spite of these political activities, the membership of present-day American labor organizations, divided as it is into the socialistic and anti-socialistic camps, lacks the political solidarity that

³⁸ "The increasingly frequent use of the injunction, after the middle of the nineties, irritated them [i. e., the American workmen] and awakened in them a feeling of bitterness toward the courts. The limitations placed upon the use of the boycott, the attitude of the courts toward labor legislation, the use of the Sherman Anti-Trust Act as a weapon against labor organizations and disappointing experiences with a number of politicians of the old parties—all these circumstances disposed the workmen to listen to the preachers of political action" (L. Levine, "Development of Syndicalism in America," *Political Science Quarterly*, September, 1913, p. 456).

³⁹ Constitution, 1900, p. 40.

⁴⁰ Kirk, p. 147.

is a prerequisite to the successful, general application of the political boycott.

The boycott has not only been weakened by legal prohibitions, but its efficiency has been greatly reduced by the aggressions of certain employers' associations. The measures adopted by such associations have been in the main designed to aid the boycotted employer during the period of the boycott. The Brewers' Association adopted in 1886 the rule that no member of the association should sell "beer, porter, or ale" to any of the customers of another member who was involved in a boycott;⁴¹ in this way the consumers could not obtain a substitute for the boycotted beer and would, therefore, be forced to raise the siege. Similarly, the members of the Stove Founders' National Defense Association endeavored to aid a boycotted employer by providing that, when the "goods of any member of the association are boycotted, none of the members of the union originating the boycott should be given employment by any member of the Association."⁴² A more direct method of counteracting the effects of a trade-union boycott was illustrated in the plan of the Chicago Employers' Association, an organization of 3000 members, divided into about 50 distinct trades and businesses; this association proposed to place any boycotted member upon a fair list, and then to have "the members of the whole federation give to that firm all the business" possible.⁴³

In recent years, however, the employers' association which has rendered the most effective service in demolishing the boycott and which proceeds not by indirect methods but by directly attacking the legality of the boycott is the American Anti-Boycott Association, organized in October, 1902. After the beginning of the Loewe boy-

⁴¹ H. Schlüter, *The Brewing Industry and The Brewery Workers' Movement in America*, p. 144.

⁴² F. W. Hilbert, "Employers' Associations in the United States," in *Studies in American Trade Unionism*, edited by Hollander and Barnett, p. 196.

⁴³ *Ibid.*, p. 211.

cott, a small group of hat manufacturers addressed "letters to all employers who were on the unfair list or had been boycotted." When many favorable answers were received, Mr. Daniel Davenport was sent to interview the manufacturers to whom letters had been written. With these preliminaries the association was organized.⁴⁴ Its attitude toward the boycott is reflected in the following report of a former secretary of the association: "The boycott must be regarded as that un-American and reprehensible practice of organized labor whereby the products of a given manufacturer or any individual are held up to denunciation, contempt, and proscription under a spirit of blackmail, merely because in the opinion of a prejudiced class, whose verdict for this very reason may be biased and therefore unjust, the manufacturer or workman is regarded as unfair to labor. Such a practice is foreign to principles of fair dealing and equity which we love to regard as the spirit of our nation."⁴⁵

In its activities the association has proceeded along four lines. It has, in the first place, sought to have the law of the boycott interpreted by carrying test cases into court. On account of the great expense involved in carrying cases through the various state and federal courts an individual employer is ordinarily timid about venturing on long periods of litigation; in that event the fight is carried on by the American Anti-Boycott Association. It was, for example, conspicuously instrumental in bringing to court both the Danbury Hatters and the Buck's Stove and Range Company cases, and finally succeeded in the former case in obtaining from the Supreme Court a most important decision. The association next tries to have the interpretations of the court applied to future violations, a course which it has pursued with considerable success in its prosecutions against the Carpenters' Union for boycotting trim. Third, it makes appeals for public sympathy by encouraging the widespread

⁴⁴ Convention Bulletin of the American Anti-Boycott Association, March, 1908, p. 5.

⁴⁵ Ibid., February, 1907. Report of Secretary Boocock.

publication in newspapers and periodicals of the accounts of individual boycotts.⁴⁶ Finally, it seeks to preserve the present state of the law. To accomplish this latter object the association employs at Washington a lobbyist whose duty it is to counteract the influence of labor sympathizers and to prevent the passage of such acts as would, for example, weaken the power of the injunction and exempt labor organizations from the Sherman Anti-Trust Act.⁴⁷ The American Anti-Boycott Association has been singularly successful in achieving its purpose. By procuring important judicial interpretations adverse to the boycott, by contributing to the more stringent enforcement of laws, by scattering its discussions broadcast, and, finally, by preventing amendments to existing laws, it has been, since its organization, the most potent enemy of the boycott.

The boycott as employed by labor organizations has been almost exclusively an American institution; Schwittau, in a recent book, calls the United States the "classic home of the boycott."⁴⁸ Occasional instances of its use in foreign countries, notably England and Germany, have been recorded. In Germany the use of the boycott has had an important political aspect; thus many of the early boycotts were imposed upon inns, because their proprietors refused to furnish rooms for meetings of the Social Democratic party.⁴⁹ In 1894, however, the workmen in Berlin imposed a boycott upon the members of a Brewers' Employers' Association; this boycott was so effective that it elicited from the secretary of that association the judgment that the emergence of the boycott added to the existing stock of measures to be used in social and industrial warfare a new

⁴⁶ A typical publication of the Association is a pamphlet containing an account of the boycott against D. E. Loewe and Co. The title of the pamphlet is "Million Against One—A Conspiracy to Crush the 'Open Shop'", and it is, further, announced as being "Published by the American Anti-Boycott Association in the cause of Individual Liberty." Second edition, 1904.

⁴⁷ Convention Bulletin, February, 1907.

⁴⁸ *Op. cit.*, p. 240.

⁴⁹ Liechti, p. 21; see also Schwittau, p. 246.

and extraordinarily effective weapon.⁵⁰ It is, nevertheless, seldom used by the German labor organizations.

The same is true in England; the boycotts that are there imposed, however, resemble closely the American boycotts. The printers, for example, publish from time to time a "black list" or "closed list" bearing the names of firms hostile to the union.⁵¹ Other boycotts bear a close analogy to the American boycotts on materials. Thus Geldart cites a case of a dispute of a union with a master butcher in Belfast; the union here "induced other butchers who were in the habit of taking meat from him to cease to do so by threatening to call out unionists who were working for them."⁵² Few accounts exist of boycotts in other countries, but it is likely that they are used, although their extent cannot be estimated. Liechti describes a boycott in Switzerland following a strike of the cigar makers, who in articles in the labor papers requested working men not to smoke the products of the unfair firm.⁵³ There was reported also in 1912 an interesting instance in Italy of the imposition of a boycott on materials. The local labor union of an Italian town imposed a boycott upon the owner of the marble quarry, whose workmen had gone on a strike. As soon as the boycott notice was published the quarry was unable to get sand necessary for cutting marble because the workmen in a neighboring town, from which the sand was usually shipped, refused to load sand destined for the boycotted quarry.⁵⁴

⁵⁰ Schwittau, p. 246.

⁵¹ *Ibid.*, p. 248.

⁵² "Report of the Royal Commission on Trades Disputes," in *Economic Journal*, vol. xvi, p. 199.

⁵³ *Op. cit.*, p. 30.

⁵⁴ *Giornale degli Economisti e Rivista di Statistica*, November-December, 1912, p. 520.

CHAPTER III

THE BOYCOTT ON MATERIALS

In a suggestive section in his book on the Principles and Methods of Industrial Peace,¹ Professor Pigou gives as one of the two factors in industrial disputes the "demarcation of function" between the employer and the unions. By this he means that industrial disputes arise when labor unions attempt to interfere with the management of industrial establishments. He further discusses under the demarcation of function those disputes which arise when "the sources from which an employer draws his material or the destination of his finished product" are brought by the union into question. It is with a description of the attempts of the American trade unions to dictate to employers the choice of the sources and destinations of materials that a discussion of the boycott on materials deals.

The salient characteristic of the boycott on materials is its appeal to organized labor. Its essence is organized disapproval of certain implements and materials with which men work. For various reasons, contingent upon the extent and character of organization and dependent upon the characteristics of industry, large numbers of workmen massed into compact bodies for the purpose of self-protection have found it necessary from time to time to exercise, among others, one of their most important functions—the deliberate examination and selection of the things upon which they labor, a selection which carries with it the patent necessity of rejecting products which have been manufactured under conditions objectionable to organized labor and whose continued manufacture is interpreted by such labor as constituting a menace to its welfare. Just as work-

¹ p. 38.

men take umbrage at unsanitary shops and threaten strike when they are told to work beside a non-union fellow-laborer, so they, with less vehemence, perhaps, announce their opposition to unfair raw materials. Choice of fellow-workman, choice of working conditions, choice of implements and materials, constitute a series whose elements differ markedly in degree, but not perceptibly in kind. The motives which actuate a man to choose carefully sanitary workshops and desirable associates are not difficult to discern; his reasons, however, for discriminating against tools and goods, manufactured in many cases in remote districts, are not so clear and therefore require elucidation.

Two influences can explain the origin of practically all boycotts imposed upon materials and exercised wholly by companies of organized workingmen. They are (1) the desire for work, and (2) sympathy for fellow-workmen. (1) By the desire for work is not meant the inarticulate strivings of unorganized individuals for employment, but that desire, which becomes potent through organization, to obtain work that is now in the hands of outsiders or to retain work upon which aggressive attacks and significant inroads are being made by intruders. More particularly this influence has manifested itself in three forms: (a) in the boycott upon prison-made goods, (b) in the boycott upon goods manufactured by new machinery, and (c) in the embargo upon foreign products.

(a) As early as 1830 the journeymen stone cutters of New York assembled to protest against the importation of cut stone from Sing Sing and other prisons on the grounds that "it is sent in large quantities to the New York Market and competes with the stone of free labor;" and they finally resolved "not to fit, alter, or do any work on any stone worked by convicts."² From 1830, then, and perhaps earlier if the records were extant, the pages of American labor journals contain frequent references to boycotts imposed upon the products of convict labor, always imposed

² New York Sentinel and Workingman's Advocate, July 3, 1830, p. 1.

with the express intention, of course, of wresting this work from convicts and placing it in the hands of organized free labor.³

(b) The invention of machinery and the consequent division between two classes of laborers of processes that had before its invention been under the control of one class give occasion for the second group of boycotts. The invention, for instance, of the planer, a machine for cutting soft stone, resulted in the loss by the stone cutters of the labor required for transforming the rough stone into a partially finished state, since this work could be more economically done by an unskilled laborer operating a machine. As a consequence, the Journeymen Stone Cutters' Association for many years bitterly fought the advance of machine-cut stone by requiring its members not to finish or set such stone.⁴

The experience of the stone-cutters has been repeated with slight variations in other trades. At their convention of 1901 the Plumbers, Gas Fitters and Steam Fitters discussed the encroachments of the factory workers upon the work of the plumbers, encroachments which were attributable to the increasing application of machinery to processes formerly the property of hand labor. In this trade it had become customary for manufacturers of plumbing supplies to furnish "fixtures complete in every detail," thus giving to factory hands the labor which had hitherto been performed by plumbers. To prevent the continuance of this practice, a resolution was presented to boycott, by refusing to install, fixtures that had been fully completed in the factories.⁵ The carpenters' boycott on building trim, for which it is extremely difficult to assign a single cause, is ascribed by the editor of the *International Wood Worker* to the fear of the carpenters lest the mill workers gradually assume control of work that is now performed by carpenters. "The

³ Constitution, Journeymen Stonecutters' Association, 1892, Art. xi.

⁴ Stone Cutters' Journal, May, 1901, p. 13; August, 1901, p. 14.

⁵ Plumbers, Gas and Steam Fitters' Journal, October, 1901, p. 52.

officers of the Carpenters affect to believe," he writes, "that if they can get control of all the factories, they could effectively prevent a great many innovations in factory practise that lessen the amount of work for the carpenter to execute on the buildings."⁶ To obtain this control, therefore, the carpenters boycott the products of those mills which they are unable to unionize.

(c) The embargo on foreign goods is either a manifestation of that "spirit of local monopoly" against which, according to Sidney and Beatrice Webb, "trade unionism has had constantly to struggle,"⁷ or constitutes a guarding of districts in which high wages prevail against the tendency of manufacturers to have parts or the whole of products manufactured in low-wage districts or localities. In the early history of the Stone Cutters' Union this policy of local discrimination ran rampant. The Buffalo local union in 1895 incorporated in its constitution a rule prohibiting the importation of cut stone to that city without regard to the wages or hours in the locality where the stone was partially worked.⁸ In 1894, too, a public meeting was held in New York City for the purpose of discussing "local restriction upon the importation of foreign made building materials."⁹

Early in its history the local union of coopers in New York declared that union men in other localities who manufactured barrels for the New York market must demand for that work a price, freight included, that would make the price of their barrels equal to that of the New York product. This declaration of policy carried with it the implied threat that the members of the New York local union would refuse to trim barrels manufactured in those places where the rate of wages was appreciably below that of New

⁶ The International Wood Worker, May, 1907, p. 6.

⁷ Vol. i, p. 73.

⁸ Stone Cutters' Journal, March, 1895, p. 3.

⁹ The Carpenter, April, 1894, p. 3. The local union of carpenters of Butte, Montana, decided in 1896 that its members should not "handle building material manufactured outside the city, so long as members are idle who are competent to manufacture the material at home" (ibid., February, 1896, p. 11).

York.¹⁰ A similar policy has been frequently employed by local unions of stone cutters. The New York local union reported in 1895 that it was "prepared to stop all cut stone from coming to that city that is being cut at less than New York wages."¹¹ In 1902 the Philadelphia branch of stone cutters boycotted stone from Hummelstown because it claimed that the members of the Hummelstown branch received a lower rate of wages than its members.¹²

Within the last decade or two, however, influences have been at work that have made unnecessary in some cases and impolitic in others the imposition of boycotts upon prison-made, machine-made, and foreign materials. The continued agitation for the abolition of convict labor on goods that enter into competition with free labor and the telling attacks upon the private contract system have already to some extent lessened the necessity for the boycott on prison products. The increased strength of trade unionism in the United States, resulting in the control of newly invented machines by the union, and the adoption of more liberal policies toward the introduction of machinery, not to speak of the futility of boycotting the products of machines that are economically cheaper than the methods they replace, have had their effect on the number of boycotts of the second class.¹³ Finally, the rise in the power of the national union,¹⁴ the substitution of district and national systems of wage agreements to replace the old local agreements,¹⁵ and the fact that "just in proportion as Trade

¹⁰ Coopers' Journal, September, 1871, p. 363.

¹¹ Stone Cutters' Journal, March, 1895, p. 14.

¹² Ibid., March, 1902, p. 7; see also *ibid.*, January, 1906, p. 10.

¹³ The Glass Bottle Blowers' Association has, for example, frequently agitated the use of a label on hand made bottles, thus indirectly boycotting the machine product. The recognition, however, of the futility of opposing such an efficient machine as the automatic glass bottle blowing machine has, among other reasons, prevented the adoption of a label.

¹⁴ G. E. Barnett, "The Dominance of the National Union in American Labor Organization," in *Quarterly Journal of Economics*, vol. xxvii, p. 455.

¹⁵ G. E. Barnett, "National and District Systems of Collective Bargaining in the United States," in *Quarterly Journal of Economics*, vol. xxvi, p. 425.

Unionism is strong and well established, we find the old customary favoritism of locality replaced by the impartial enforcement of uniform conditions upon all districts alike,"¹⁶ all these tendencies have combined to make local monopoly and the boycott dependent upon it relics of the past.

(2) All boycotts cannot, however, be traced to these three sources. In fact, materials are often stigmatized as unfair not because union members see in their manufacture encroachments upon their own fields of labor, but because it has become a not infrequent practice for union members to refuse to work upon materials that have been manufactured by workmen receiving low wages and working long hours in unsanitary shops. Because of sympathy aroused by a knowledge of the conditions under which such materials are produced, coupled with an appeal for aid by the aggrieved workmen, it frequently happens that the members of strong unions will reject materials to whose conditions of manufacture they could, so far as their own working conditions are concerned, afford to be totally indifferent. That these feelings of sympathy for fellow-workmen have in recent years become intensified is indicated by the gradual changes in the type of labor organization that obtains in the United States, considered with special reference to the tendencies of extensive organization and trade federation. As a result of these tendencies, industry is now more exposed to the imposition of the boycott on materials than it was either under the industrial form of labor organization as practised by the Knights of Labor or under the strictly trade organizations that dominated the American Federation of Labor in its early history. A more detailed discussion of this aspect of the problem will be given at the close of this chapter.

The classification of boycotts on materials to be employed here rests upon the conception of industry as being of a given complexity and composed of a number of strata, more

¹⁶ Webb, vol. i, p. 79.

or less homogeneous. The character and number of these strata, depending as they do upon such general forces as the extent of the division of labor, means of integration or transportation facilities, and more generally upon the status of industrial technic, need not delay us long. It is only necessary to point out that these industrial layers present different degrees of organization. In the building trades, for example, it is the higher strata, composed of such trades as those of bricklayers, carpenters, plasterers, plumbers, and others, that are well organized; whereas the laborers in a lower stratum, such as the brickmakers and woodmill workers, are poorly organized. In the stove industry, on the other hand, the iron molders—lower-process workers—are well organized, but the stove mounters are not so well organized.¹⁷ These factors, if they can be distinguished in individual instances of boycotts, should throw considerable light upon the causes operating to produce a boycott. There are accordingly four classes of boycotts that can be distinguished on the basis of this classification; the backward, forward, lateral,¹⁸ and transportation boycotts.

(1) The backward boycott is defined as the refusal by men in the higher processes of manufacture, or in the higher strata of industry, to work on or with material which in the next lower process of manufacture, or in the next lower stratum of industry, is made by non-union workmen. Perhaps the best-known boycott of this group is that of the United Brotherhood of Carpenters and Joiners on building trim manufactured in non-union mills. The ultimate end of the boycott is the elimination of women and children from mill work¹⁹—particularly the dangerous work con-

¹⁷ The concepts "lower and higher processes" may be made clearer to the reader if replaced by their equivalents, "earlier and later processes."

¹⁸ D. H. Macgregor, *Industrial Combination*, p. 95. Macgregor uses the terms backward, forward, and lateral, to describe the three forms of integration employed by firms, "that have hitherto operated at one distinct stage of the whole process of supply," in "undertaking additional processes."

¹⁹ *The Machine Woodworker*, August, 1892, p. 104.

nected with the care of machinery,—the regulation of the hours of labor, and the institution of an adequate minimum wage for mill workers. The motives of the carpenters' union for undertaking the organization of mill workers have been variously interpreted. The carpenters themselves, through their official spokesmen, justify the boycott on the ground of a broad humanitarianism,²⁰ as simply a result of their desire to alleviate the conditions of labor in the mills. Some, on the other hand, are inclined to hold the fear of competition by the mill workers as the controlling motive;²¹ still others, believing with an officer of the union that "the carpenter of to-day may be the mill-worker of tomorrow,"²² find in the boycott an evidence of wise foresight; whereas the skeptical see as the motive only a desire for expansion and increased membership and revenue. The real motive is in all probability a composite of the four.

The boycott began early in 1896 with a notice by the New York unions to builders, architects, and manufacturers of trim work "cautioning them not to award further contracts to outside firms as, unless proof is given that the trim has been constructed under strict union rules, they would at any time refuse to handle it."²³ The early agitation against unfair trim was directed principally against the mills of New York State and New York City. With the aid of the New York City Building Trades Council, which called sympathetic strikes whenever non-union carpenters were employed to install unfair trim, the boycott rapidly became effective.²⁴ Each successive organizer's report indicates the bringing into line of more mills that supplied the New York market. By 1908, twelve years after the inception of the boycott, 189 of the 230 woodworking mills in New York City had been organized, and in 1910 Vice-President Quinn reported the organization of 40

²⁰ Neal, p. 618.

²¹ Proceedings, 1910, p. 86.

²² Report of the President, in Proceedings, 1906, p. 58.

²³ The Carpenter, January, 1896, p. 4.

²⁴ Ibid., October, 1898, pp. 4, 14.

more.²⁵ An organizer operating in the East reported in 1909 that all mills furnishing trim and interior decorations for New York City, with the exception of 4, were working eight hours a day.²⁶ Of the 200,000 members of the United Brotherhood of Carpenters and Joiners, one fifth, or 40,000, were in 1912 millmen, whereas the remaining four fifths were outside carpenters;²⁷ and of the 3814 mills and shops that were in 1908 within the territorial jurisdiction of the Carpenters' Union, 982 employed exclusively members of the United Brotherhood.²⁸

So effective has been the boycott in New York that "experienced builders of the Bronx, Manhattan, and Brooklyn have all testified that it is practically impossible to erect a building in any part of that territory except the outskirts of Brooklyn unless the builder employs union men exclusively on those buildings in the organized trades. If the builders endeavor to escape the restrictions upon the use of non-union material by employing non-union carpenters to handle such material, they are confronted by a general strike of all trades employed on that building until such time as the non-union carpenters are discharged and the union carpenters, who refuse to handle the material, are restored. Such is the provision of the constitution of the Building Trades Council. This evidence is uncontradicted and shows that union carpenters not only refuse to handle the non-union material, but prevent the employment of carpenters who will be allowed to handle it."²⁹ These methods effectually eliminate non-union building trim from the New York market.

The same efforts have not been made to exclude unfair trim from other cities. Because New York represents the

²⁵ Brief on Motion for Preliminary Injunction, *Paine Lumber Co., etc., v. United Brotherhood of Carpenters and Joiners, et als.*, p. 7.

²⁶ *The Carpenter*, November, 1909, p. 14.

²⁷ Neal, p. 622.

²⁸ *Proceedings*, 1908, p. 25.

²⁹ *Plaintiff's Brief for Permanent Injunction, Louis Bossert & Son v. Frederick Dhuy, etc., et als.*, p. 21.

stronghold of the carpenters' union, and because the Building Trades Council has there exhibited an activity in aiding the carpenters that it probably would not exhibit in a city like Baltimore, for example, and finally because expensive legal complications have attended the prosecution of the boycott in New York, no systematic attack on unfair trim has been made outside of that city. Sporadic instances of such boycotts, however, occur from time to time throughout the country.⁸⁰

From an examination of the carpenters' boycott it might be inferred that the stronger of any two trades placed in a juxtaposition similar to that of the carpenters and the mill workers would invariably aid the weaker by refusing to use materials manufactured under non-union conditions. But this is not always the case. The Bricklayers and Masons' International Union, like the United Brotherhood of Carpenters and Joiners, is composed of skilled laborers, and its members are perhaps even more strongly organized than are the carpenters; the brick, tile and terra cotta workers, like the mill workers, are unskilled laborers in a state of disorganization. The product of the brickmakers is the bricklayers' material. In short, the positions of bricklayer and brickmaker and of carpenter and trim worker are exactly analogous. Yet the reactions in the two cases are totally different. The carpenters boycott non-union trim, not at the request, but in the face of the sheer indifference of the mill workers;⁸¹ the bricklayers, on the contrary, will continue to use brick regardless of its condition of manufacture and in spite of requests for boycotts by both the brickmakers and the American Federation of Labor.⁸²

The explanation of this difference in attitude resolves itself into a question of union policy. The Bricklayers and Masons' International Union has in its relation with the American Federation of Labor and with many building trades councils exhibited an attitude of extreme reserve

⁸⁰ *The Carpenter*, September, 1895, p. 11.

⁸¹ *Ibid.*, March, 1910, p. 10.

⁸² Annual Report of the President, December, 1911, p. 131.

and independence; the policy of the United Brotherhood of Carpenters and Joiners has been just the opposite. It is natural, therefore, that these two opposing points of views should reveal themselves in the action of the unions with respect to the materials upon which they work, although it must not be forgotten that the gap in technic is much greater between bricklaying and brickmaking than between carpentering on a building and in a mill. The policies of the Bricklayers and of the Carpenters represent, however, extremes between which there exists a gradation of policies.

Such backward boycotts as the Carpenters' boycott of trim or the boycott by the Stone Cutters and Granite Cutters of stone which is quarried by non-union quarry workers,³³ or which is cut in the rough, at the quarry towns, by non-union stone cutters and granite cutters,³⁴ are usually the result of voluntary action by the boycotting union, with the end in view of aiding the lower-process workers. Of the same character are the boycotts by the Brewery Workmen of unfair cooperage;³⁵ the boycotts by the Marble Workers of marble that has been polished by non-union marble polishers;³⁶ or even the boycotts by the Plumbers, Gas Fitters and Steam Fitters of the products of firms unfair to the Metal Polishers.³⁷ In all these cases the boycott is imposed with reasonable frequency; and there can be said to be such close connection between the trades that the power to boycott will usually be exercised by the higher-process workers whenever their neighbors find their organization threatened. With these unions, then, with the probable exception of the Plumbers and the Metal Polishers, the boycott on unfair materials constitutes a recognized method of organization that is often employed; by none,

³³ Monthly Circular of the Journeymen Stone Cutters' Association of North America, August, 1892, p. 4; Granite Cutters' Journal, December, 1901, p. 4.

³⁴ Granite Cutters' Journal, December, 1901, p. 10.

³⁵ Coopers' International Journal, March, 1903, p. 110.

³⁶ Proceedings, 1911. Reported in the Marble Worker, July, 1911, p. 171.

³⁷ Plumbers, Gas and Steam Fitters' Journal, August, 1900, p. 7.

however, on so extensive a scale as that employed by the Carpenters. It is necessary to note, furthermore, that in the unions comprising this group either the lower and higher process workers are members of affiliated trades that were generically identical, like the stone cutters working in large cities and those working in quarry towns, or these unions work in close contact with one another, like the Brewery Workmen and the Coopers.

On the other hand, unions that are not related either by identity in origin or by proximity in labor do not make such frequent and effective use of the backward boycott. Indeed, even when a request is made by the union that manufactures a product that an affiliated union should refuse to handle that product, the request is often disregarded. In 1911 the president of the Metal Polishers' Union said that the local unions "will have to take a stand against the employment of members of the American Federation of Musicians until such time as they decide to use instruments" bearing the label of the metal polishers. The inference is that they should boycott instruments handled by non-union metal polishers.³⁸ Of equal futility was the request made by the International Coopers' Union of the Painters and Decorators and of the Typographical Union that they should boycott respectively the varnish and linseed oil and the printers' ink that were carried in barrels manufactured by non-union coopers;³⁹ of the same character, too, and probably yielding the same results, was the appeal by the Textile Workers' Union of Danville, Virginia, that the garment workers in overall and shirt factories should observe the boycott upon "overall goods, cheviot and sheeting," the products of an unfair Southern cotton mill.⁴⁰ Even where the relations between two unions is so distant as that between the Musicians and the Printers there are evidences of sympathetic action, for in 1908 the Newark local union of

³⁸ The Journal [Metal Polishers, Buffers, Platers, Brass Molders, Brass and Silver Workers], November, 1911, p. 17.

³⁹ Proceedings of the Nineteenth Annual Convention of the American Federation of Labor, 1899, p. 99.

⁴⁰ The Garment Worker, August, 1901, p. 17.

the American Federation of Musicians adopted a resolution binding its members to the purchase of only such sheet music as bears the label of the Allied Printing Trades Council, thus indirectly boycotting music that does not bear such a label.⁴¹ In general, however, the backward boycott flourishes only between unions whose work is more or less intimately associated, and as this association becomes closer the boycott becomes merged into forms of the closed shop.⁴²

Whenever the backward boycott is employed, it is used as a weapon by a stronger union to protect or to strengthen a weaker. But it must be noted that stronger and weaker are relative terms, and that frequently unions that are themselves the beneficiaries of the backward boycott do not hesitate to employ the same weapon in the organization of still weaker trades. The Coopers, for example, frequently invoke the aid of the Brewery Workmen by requesting them to boycott non-union cooperage; in 1909, however, the Coopers International Union notified the Machine Coopers Employers' Association that they would not be permitted to use staves made and bent by non-union labor in the woods.⁴³ The Brick, Tile and Terra Cotta Workers, although they themselves periodically endeavor to have the Bricklayers boycott the products of non-union brick-yards, have occasionally, in an effort to sustain the organization of brick-yard laborers, boycotted clay mined by non-union laborers.⁴⁴ Long drawn out strikes and lockouts also force unions that are otherwise strong to accept aid during the continuance of hostilities. The Iron Molders, for instance, who will refuse to handle cores made by non-union core-makers⁴⁵ and patterns made by non-union pattern makers,⁴⁶ were, when on strike, helped by the machinists, who refused to work on scab castings.⁴⁷

⁴¹ The International Bookbinder, October, 1908, p. 344.

⁴² Stockton, chapter v, also p. 92.

⁴³ Coopers' International Journal, January, 1909, p. 34.

⁴⁴ Brick, Tile and Terra Cotta Workers' Journal, September, 1907, p. 15.

⁴⁵ Labor Leader, Baltimore, July 6, 1912, p. 1.

⁴⁶ American Federationist, August, 1898, p. 123.

⁴⁷ Journal of the Knights of Labor, February 6, 1896, p. 2.

(2) The forward boycott is defined as the refusal by union laborers in the lower processes of manufacture to make material that will probably or certainly be used in the next higher process by non-unionists. This form of the boycott and the backward boycott are reciprocal. Usually a union which at one time imposes the backward boycott is at another time the beneficiary of the forward boycott. Thus the granite cutters, whose use of the backward boycott has already been described, were aided by lower process workers when in 1907 the granite cutters in the New England quarry towns of Barre, Quincy, and Westerly were requested to refuse to cut granite that was destined for unfair granite-cutting firms in the West.⁴⁸ When the Brewery Workmen are on a strike, the Coopers will at times refuse to work on cooperage that will be sent to the non-union breweries.⁴⁹ In 1901, in discussing the complaint of the Carpenters' Union that the wood workers can be of no assistance to them, the Wood Workers pointed out that when, in the erection of the Marshall Field Building in Chicago, a contractor had imported scabs to work on that building, "the wood-workers in the factory having the contract for the mill trim notified those in interest that if any mill trim was delivered to the building a strike would be called in the factory. The factory did attempt to deliver the material and the wood-workers struck."⁵⁰

A union will at times deliberately organize laborers in a lower layer of industry in order to take advantage of the refusal of that union to work on material that is intended to supply unfair labor. The Marble Workers have been actuated by this motive almost to the exclusion of any other in their organization of the factory workers in the marble

⁴⁸ Granite Cutters' Journal, September, 1907, p. 5. In the same year a communication from Waco, Texas, discussing the means for unionizing several non-union granite-cutting firms at that place, states that "as long as they can get granite it will be hard to do anything with them, so it would be a good thing to put a stop to their getting granite, either finished or rough stock" (ibid., June, 1907, p. 10).

⁴⁹ Coopers' International Journal, August, 1912, p. 455.

⁵⁰ The International Wood Worker, June, 1901, p. 69.

industry. Frequent references are found throughout the journals of the International Association of Marble Workers in which the officers encourage the organization of the shopmen on the ground that "the shopmen can help the setter, by refusing to supply the finished material to employers who employ others than members of the International Association of Marble Workers."⁵¹ This fact was again emphasized in the annual report of the secretary, who states that because the masons are setting marble it is necessary for the International Association of Marble Workers to control the shop work, in which case the shop workers would refuse to cut stone to be set by masons. "Control the trade from the mill to the building and no firm will attempt to put others than our members at work in the building."⁵² It would not be surprising if the carpenters, in their efforts to organize the mills of the country, had in view the creation in the unionized mills of a reserve force that could in the remote future be employed as the marble setters employ their organized factory workers.⁵³

Where, on the other hand, two groups of workers are members of trades not closely allied, it sometimes follows as a necessary consequence of the selfish influences underlying the motives of individuals that one group will not impose either of the two forms of boycott unless there is an immediate or future prospect that the union which it now aids will later be in a position to extend it similar aid. This fact is well illustrated in the dispute in 1903 between the Retail Clerks' International Protective Association and the Boot and Shoe Workers' Union. A retail shoe dealer in Haverhill, Massachusetts, was the sole agent in that town

⁵¹ *The Marble Worker*, January, 1908, p. 4.

⁵² *Ibid.*, August, 1910, p. 193.

⁵³ A forward boycott imposed by the mill-workers could not be effective unless practically all mills in the United States were organized. If, in their present state of organization, the mill-workers refused to manufacture trim that was destined for an unfair building contractor, the boycott would be ineffective because of the contractor's ability to buy from any one of the numerous non-union mills that have so far defied the attempts of the carpenters' union to organize them.

for the union label "Walk-Over" shoe; because of his refusal to employ union clerks, he was declared unfair by the retail clerks' organization, which began its campaign against him by requesting the manufacturer of Walk-Over shoes to remove his local agency from this unfair dealer. Failing in this, the Clerks turned to the Boot and Shoe Workers, and requested them to refuse to help the manufacture of shoes that would be sold to the Massachusetts local agent. In the subsequent correspondence between the officers of the Retail Clerks' International Protective Association and President Tobin of the Boot and Shoe Workers' Union, the latter, while admitting the justice of the request that the Boot and Shoe Workers should use their influence with manufacturers in having them sell their products to fair dealers, took the stand that his union could not oblige the manufacturer to remove his product from a certain store. Moreover, he raised the point, which is of immediate concern here, that unless the clerks took the position that none of their members should sell anything but union shoes, they were not justified in demanding that the Boot and Shoe Workers should work only on shoes destined for dealers fair to the clerks.⁵⁴ This argument, which is so clearly stated by President Tobin, is probably that which, consciously or unconsciously, many union officials entertain before imposing either a forward or a backward boycott. The question is not only whom will the union benefit by this boycott, but what future advantages will come to the union itself.

(3) The lateral boycott is a boycott on materials, not for the purpose of organizing the workers in the lower or higher processes of manufacture, but to force the employment of members of the same union or of coordinate unions, that is, of workers in the same stratum of industry. The bricklayers boycott brick, not because it is made by unor-

⁵⁴ Proceedings of the Eleventh Convention of the Retail Clerks' International Protective Association in Retail Clerks' International Advocate, July, 1903, p. 64.

ganized brickmakers, but in order to force the organization of the bricklayers employed at the brick-yards in building kilns.⁵⁵ This form of boycott occurs generally as the sympathetic strike. Where, for example, manufacturers operating in one territorial division of an industry have trouble with their employees and attempt to have the same work done elsewhere by union labor, the workmen in the places to which the materials have been removed, in sympathy with the strikers, refuse to handle the material.⁵⁶ Under this head can be placed the early strike of the New York Cordwainers in which "the proprietor originally involved transferred his work to other shops thus precipitating a strike against all proprietors." Similarly, "the caulkers of Boston in 1866 refused to do certain work for their employers on the ground that it was intended to help certain other employers in New York whose men were on a strike and were discharged."⁵⁷

The lateral boycott first became a frequent and an effective weapon under the Knights of Labor. In disputes with railroads the lateral boycott appeared as a refusal by the railroad laborers on a fair or union road to handle the rolling-stock of railroads that were unfair to their employees. For example, the persistent opposition of the Wabash Railroad Company to the Knights of Labor caused the general executive board of the Knights to issue in 1885 an order to all members "employed on the Union Pacific and its branches and on Gould's Southwestern system that they must refuse to handle or repair Wabash rolling stock."⁵⁸ This is a typical instance. In 1893 the Brotherhood of Locomotive Engineers and the Firemen's Brotherhood ordered employees on other roads to boycott the freight and the cars of the Toledo, Ann Arbor, and North Michigan Railroad, on

⁵⁵ The Bricklayer and Mason, April, 1909, p. 88.

⁵⁶ "The usual British strike boycott aims at preventing the employer . . . from getting his work done at other places" (Burnett, p. 172).

⁵⁷ Hall, p. 35.

⁵⁸ Proceedings, 1885, p. 90.

which a strike was then in progress.⁵⁹ These boycotts obviously do not arise from a deliberate transfer of goods from a territory in which there is a strike to one in which peace reigns. But the presence in a certain region of property which belongs to foreign owners and which must be handled by men employed by others than the proprietors presents a condition that is as favorable to the imposition of the lateral boycott as does the direct transfer of goods. Because, however, of the conservatism and strength of the railway unions, and because the vast public loss incurred through strikes on railroads would most likely bring legal interference with such sympathetic strikes, this form of boycott no longer flourishes.

An interesting variation of it is found in the sympathetic strike as practised by the United Mine Workers. Here, too, as above, the sympathetic strike does not consist in refusing to work upon goods that have been sent from other districts; the entry, however, upon a sympathetic strike has the effect of forcing back into employment members of the same union. "Because the capacity of the coal mines is so much greater than the possible consumption of coal, it happens that when one district is compelled to strike . . . the markets can be supplied by mines in other districts and this has often been done without loss or profit to the employers that engage in the contest. The operators in the districts where work has not been suspended would enter into combination with those in the striking district by which they would supply the trade and contracts of the operators on strike, giving them a share of the profits which accrued to those supplying the trade."⁶⁰ Obviously, a refusal by the miners who are to mine this surplus coal to perform their duties is as effective a means of forcing the striking miners back into employment as is the boycott by the Knights of

⁵⁹ L. B. Boudin, "Der Kampf der Arbeiterklasse gegen die richterliche Gewalt," in *Archiv f. d. Geschichte des Sozialismus u. d. Arbeiterbewegung*, 1. Heft, 1913, p. 50. See also *Journal of the Knights of Labor*, March 30, 1893, p. 1.

⁶⁰ Testimony of John Mitchell in Report of U. S. Industrial Commission, vol. xii, p. 37.

Labor on unfair rolling-stock in obtaining concessions for striking railroad employees.

In industries in which it is comparatively easy to ship the parts of goods or unfinished products from place to place, or from factory to factory, the lateral boycott or sympathetic strike occurs with more frequency. It is thus often employed by such unions as the Hatters and the Garment Workers. In the strike of the Ladies' Shirtwaist Workers in New York in 1910 many sympathetic strikes were called to prevent the unfinished goods from being sent to be finished in other establishments or in other cities.⁶¹ The clothing strike in Baltimore in 1913 was ostensibly entered into by the Garment Workers to prevent the manufacture by a local establishment of goods that could not, because of the strike in that city, be manufactured in New York. On the same theory, the Granite Cutters' Union has in its national constitution a section devoted to "work sent elsewhere during a strike," which states that "when the members of a branch are on a strike or are locked-out, and where the employers send their work to another locality to be cut, no other branch should allow its members to cut such work for any employer to help out the employer where the strike or lockout is going on."⁶²

These forms of boycott, which have been considered in the foregoing discussion from the standpoint of their effect on the laborer, can now be briefly regarded from the standpoint of their effect on the employer. The backward boycott affects one group of employers by preventing them from buying certain materials that are distasteful to the union, and it affects another group of employers by decreasing the number of their customers. The forward boycott forces a manufacturer to restrict his sales by rendering it impossible for him to sell to manufacturers who have incurred the hostility of his laboring force, and it affects the latter by restricting their buying market. The lateral

⁶¹ Bulletin, New York Department of Labor, no. 45, September, 1910, p. 371.

⁶² Constitution, 1905, sec. 112, p. 39.

boycott is designed to prevent a manufacturer from filling his orders by intimidating those manufacturers who seek to help him in the production of his goods. Finally, there is the fourth form of the boycott by which employers may become completely cut off from one another and from industry in general. When this boycott is in force, they sometimes cannot have brought to them the materials they buy and at other times cannot have carried from them the products they sell. This state of affairs arises when manufacturers are boycotted as to transportation facilities.

This boycott has been applied almost exclusively by the local unions of the International Brotherhood of Teamsters. In the period between 1900 and 1907 it can be said that there was hardly an industrial dispute of any importance in places where the teamsters were at all organized with which they did not have some connection. Their part in the dispute consisted in refusing to haul goods, either because the goods themselves were unfair or because the points of origin or of destination of the goods were under the union ban. At one time or another the teamsters have extended their support to the Bakers,⁶³ the Freight Handlers,⁶⁴ the Brickmakers,⁶⁵ the Longshoremen,⁶⁶ the Miners,⁶⁷ the Laundry Workers,⁶⁸ the Meat Cutters and Butchers,⁶⁹ the Wood Workers,⁷⁰ the Coopers,⁷¹ the Garment Workers, and many other trades. Now they will refuse to haul goods that are handled by non-union freight-handlers and to haul freight to and from the piers of the New York, New Haven and Hartford Railroad because the longshoremen

⁶³ Team Drivers' Journal, April, 1901, p. 10.

⁶⁴ Ibid., May, 1903, p. 6.

⁶⁵ Brick, Tile and Terra Cotta Workers' Journal, October, 1906, p. 12.

⁶⁶ Magazine of International Brotherhood of Teamsters, September, 1904, p. 13.

⁶⁷ Proceedings of the Third Annual Convention of the International Brotherhood of Teamsters, 1905, p. 98.

⁶⁸ The Teamsters, November, 1905, p. 24.

⁶⁹ Magazine of the International Brotherhood of Teamsters, August, 1904, p. 6.

⁷⁰ Team Drivers' Journal, June, 1902, p. 13.

⁷¹ Coopers' International Journal, June, 1903, p. 260.

there are on a strike; and again they will not carry bread baked by other than union bakers, or will refuse to haul unlaundered collars from the Chicago factory of the Cluett-Peabody Company, where the collar starchers are in a state of lockout. In the great lockout of the Garment Workers in Chicago in 1905 the teamsters, by first refusing to haul for non-union clothing firms, soon entered into a struggle that eventually involved their whole organization; indeed, so great was their activity that it was difficult to determine after some time had elapsed whether the trouble had originated with the Garment Workers or with the Teamsters.⁷² Toward the Chicago packing house employees, in their frequent strikes, the teamsters have exhibited the same sympathy by refusing to haul to or from the stock-yards.

This facility in becoming involved in foreign disputes, which inheres in the transportation industry, has not escaped the critical comment of the officers of the teamsters' union. In an editorial in the journal of the union in 1903 the writer asserts that "the strongest argument some unions use nowadays to convince themselves that they ought to go out on a strike is that they will have the support of the Teamsters' Union."⁷³ In his report in 1905 the third vice-president of the Teamsters' Union makes the following philosophic comment upon the tendency of the Teamsters to be drawn into every sort of industrial dispute: "The Brotherhood of Teamsters is peculiarly situated. We are like the keystone of the arch. Not only do other unions lean on us, but employers also. We are 'go-betweens' in almost every branch of industry; and on that account, whenever industrial troubles arise, we are pulled and hauled on every side. It is 'teamsters, come here' and 'teamsters, go there.' A great deal depends upon our action in industrial troubles."⁷⁴

⁷² Proceedings of the Third Annual Convention of the International Brotherhood of Teamsters, 1905, p. 18. See also *Weekly Bulletin* [Garment Workers], January 6, 1905, p. 1.

⁷³ Teamsters' National Journal, March, 1903, p. 9.

⁷⁴ Proceedings, 1905, p. 43.

In a system of industry in which union methods of pressure were not interfered with by the courts and where the technic of industry and the strength of the labor organizations remained comparatively unchanged, it is conceivable that each of these four forms of boycott, once established and tried, would be indiscriminately applied to industrial disputes. The courts interfere, however; organization changes, becoming stronger here and weaker there; and the policies of labor leaders undergo complete transformation. It happens, therefore, that a popular form of pressure in one period of industry becomes obsolete in the succeeding period. Thus the frequent declaration by the courts of the illegality of the sympathetic strike and the supposed popular prejudice against that form of strike have interfered with its application.⁷⁸ The use of the transportation boycott has been influenced not so much by legal obstacles and popular opposition as by a change in union policy.

Aroused by the trouble and expense in which they became involved through their sympathetic participation in the affairs of other unions, the International Brotherhood of Teamsters declared in 1906 against such action, and inserted in the constitution a section forbidding a strike "in sympathy with any organization not affiliated with the Brother-

⁷⁸ Thus, Adams and Summer contend that the sympathetic strike is one of the "three species of strikes upon which the public seems to have set the seal of its disapprobation" (p. 185). In spite of its unpopularity, however, Dr. Ira Cross, after an examination of the report of the Bureau of Labor on strike statistics, noticed "a slow but steady growth in the number of sympathetic strikes from 1896 to 1905," a growth which he attributed to the "increasing number of strikes against performing work for other establishments in which a strike or lockout was pending or against furnishing material to such establishments" ("Strike Statistics," in Publications of the American Statistical Association, vol. xi, p. 175). Huebner, too, while he finds the strike against the use of non-union material one of growing importance, believes the sympathetic strike to be falling in importance (p. 114). He, however, overlooks the gradual rise in his curve beginning with 1896. This increase, in the face of legal obstacles, is probably due to changes in organization in American trade unions. It is, however, too small as yet to be of any great significance. The inclusion, too, in a study of the statistics of sympathetic strikes of all forms of such strikes makes the conclusions of little value for our purposes here.

hood."⁷⁶ It is doubtful, however, whether the adoption of such a policy means the cessation of the transportation boycott. Legislative action by voluntary associations forbidding practices that are advantageous to large numbers is rarely so effective as is the interference of the legal machinery of a state. And, as it happens, in this particular case certain changes in organization are being experienced that may nullify the effect of the Teamsters' constitutional provision. For "in many cases the teamsters are engaged exclusively in handling the material used by a certain industry, or the finished product of that industry, as the bakery wagon drivers, the laundry wagon drivers, the beer wagon drivers; the close connection existing between these men and the other workmen with whom they are associated has consequently led to the extensive practice of taking them into" their organization."⁷⁷ From which it follows that, even though the policy of the Teamsters' Brotherhood may give the transportation boycott a serious setback for a while, these tendencies of organization will nevertheless cause it to revive in the end under different auspices. In other words, the refusal to supply certain employers with transportation facilities instead of emanating, as at present, from the Teamsters' Union, would come from such organizations as the Bakery and Confectionery Workers or the Brewery Workmen, which include in their membership a large proportion of the teamsters employed in those industries.

The question now naturally arises whether the future of trade unionism in this country will be marked by a more general or a more restricted use of the various forms of boycotts on materials. To be sure, legal obstacles and the refusal of certain unions to become involved in the disputes of other labor organizations have the effect of seriously hindering any development in the boycott on materials. On

⁷⁶ Constitution, 1906, sec. 61.

⁷⁷ Report of President, in Proceedings, in Team Drivers' Journal, August, 1903, p. 30.

the other hand, two significant tendencies in the extension and in the federation or combination of existing trade unions should result in the employment of the boycott on materials on a scale more extensive than ever before in the history of American labor organizations.

The first tendency is embodied in the generally observed adoption by American trade unions of more inclusive methods of organization. Although a variety of causes may have contributed to this tendency, there is little doubt that the power given to the union over the movement of materials has been a cogent argument in favor of its prosecution. Earlier in this chapter, in a somewhat different connection, there was described the deliberate inclusion in their union by the Marble Workers of the factory workers in the marble industry, an inclusion which was dictated by the desire to enlist the aid of the factory workers in directing the distribution of materials. Influenced by the same motive, the Brick, Tile and Terra Cotta Workers, in spite of the opposition of the United Mine Workers, maintained that clay miners were under the jurisdiction of their union. With the clay miners members of the brickmakers' union, its officers believed that the Brick, Tile and Terra Cotta Workers would have an "opportunity to organize those plants that had been fighting them for some time."⁷⁸ Dr. T. W. Glocker, arguing along the same lines, cites the jurisdictional dispute between the Retail Clerks' Protective Association and the Butchers' Union in which the latter union claimed jurisdiction over the meat cutters because "in case of a boycott against one of the packing houses, the meat-cutter can render a valuable service by refusing to cut the meat slaughtered by such a firm."⁷⁹

One of the most frequent arguments advanced by the advocates of industrial unionism is that such a form of or-

⁷⁸ Brick, Tile and Terra Cotta Workers' Journal, December, 1905, p. 20.

⁷⁹ "The Unit of Government in the Meat Cutters' and Butchers' Union," in Johns Hopkins University Circular, new ser., 1905, no. 6, p. 23.

ganization forces the use of fair materials in all departments of an industry. A correspondent of the journal of the Stove Mounters' Union, many of whose members are staunch advocates of a modified form of industrial unionism, points out that when the Metal Polishers were on a strike that lasted for four months, the Stove Mounters continued to handle the material of scab metal polishers, and that, if the Iron Molders were to strike, the mounters would mount plates made by non-union molders. If, however, the Iron Molders, the Metal Polishers, and the Stove Mounters were organized into a single union, they could eliminate the use of unfair material by "completely tying up a shop" when one union was in a difficulty.⁸⁰

A somewhat different aspect of the question is presented when the American Federation of Labor is considered as the organizing agent. It has been the custom of the Federation to organize under its direct control local unions of laborers, usually unskilled, who, either because they are too few in number or because there is no obvious relation between their trades, have not been organized by the existing national unions.⁸¹ The creation of each new union of this kind, bringing within the pale of organized labor those who have long worked outside of its protection, exposes industry to attack, or at least to the possibility of attack, from many new sources. For example, the members of a local union affiliated with the American Federation of Labor who worked for the Carborundum Company, manufacturers of a substitute for emery, were discharged by that company as a penalty for organizing into a labor union. The request was then made by these laborers that the Metal Polishers

⁸⁰ Stove Mounters' Journal, April, 1904, p. 119; April, 1902, p. 437.

⁸¹ "Moreover, the number of national associations is being constantly swelled through the efforts of paid agents maintained by the American Federation of Labor. These agents are continually organizing local unions among the non-union workers in various industries and welding them together into international trade unions" (T. W. Glocker, "The Government of American Trade Unions," in Johns Hopkins University Studies, ser. xxxi, no. 2, p. 55.)

should boycott the product of the firm, a mineral used in polishing metals.⁸⁸ Before the advent of this union, the metal polishers could use emery and carborundum polishers regardless of the condition of their manufacture; once these laborers were organized, however, the metal polishers were requested to begin to discriminate in the choice of their implements of labor. Likewise, the organization of such workers as the Gold Beaters presents to the Bookbinders, large consumers of gold-leaf, the necessity of inquiring into the source of materials upon whose conditions of manufacture they had hitherto looked with indifference.⁸⁹ Furthermore, even though these boycotts are not imposed as soon as requested, yet the presence in any industry of an organized body of workmen with insistent demands cannot fail to have its effect. And the effect is invariably a closer scrutiny by unions of the character of materials, culminating in boycotts upon those materials found to be unfair.

The second influence that contributes to foster the growth of the boycott on materials is the notable tendency, developed within the last decade or two, toward the formation of trade federations. Trade federations first influence the growth of the boycott by strengthening their constituent unions and by substituting concerted for individual action. This factor accounts for the predominance of the backward boycott in the building industry. If the brickmakers wish to boycott builders by refusing to help in the manufacture of their materials, they must stand alone, and they are not aided by any of the other trades concerned in the production of building materials. The existence of a building trades council, on the other hand, makes a boycott by any one building-trade union an extremely effective weapon. Whenever a carpenter boycotts unfair trim, he issues his manifesto blithely, for he knows that he has behind him the

⁸⁸ The Journal [Metal Polishers, Buffers, Platers, Brass Molders, and Brass Workers], December, 1901, p. 9.

⁸⁹ Proceedings of the Twenty-fourth Annual Convention of the American Federation of Labor, 1904, p. 109.

concerted support of twenty or more building-trades unions.⁸⁴

The great advantage of such a confederation of trades has been frequently noted by the unions concerned in the manufacture of building materials. Indeed, a number of such organizations have been launched. In 1897 there was organized in Chicago a federation composed of the sash and door makers, terra cotta workers, brick-makers and others, to be known as the Building Material Trades Council. This organization was sponsored by the Chicago Building Trades Council; and it was the intention at the time that the two organizations should work in harmony, "the material men refusing to work on material for a building upon which non-union men were engaged in constructing and the building trades refusing to handle material made in non-union establishments."⁸⁵ In 1899 the Chicago local union of the Metal Polishers' Union reported that it had become affiliated with the Building Material Trades Council of that city; and stated further that the affiliation was advantageous because the Building Trades Council kept posted on all brass work that was used in the construction of buildings.⁸⁶ Similar sentiments of approval from the Chandelier Workers of that city attested the power of the federation by calling attention to the fact that "non-union made chandeliers would find a poor market in that section of the country."⁸⁷ The organization was, however, an ephemeral one, and at the present time there does not exist in the United States a single building material trades' council.

A federation of trades, which is almost an exact counterpart of the Building Material Trades Council in purpose and constitution, is represented by the Metal Trades De-

⁸⁴ The Carpenter, June, 1910, pp. 2, 14. An estimate of Irving and Casson, a large non-union trim manufacturing firm, was rejected by a New York building contractor because he was "unwilling to take the risk of trouble arising" on a building where members of the Building Trades' Council were at work.

⁸⁵ The International Wood Worker, April, 1897, p. 263.

⁸⁶ The Journal [Metal Polishers, Buffers, Platers, Brass Molders, and Brass Workers], November, 1899, p. 355.

⁸⁷ Ibid., p. 327.

partment of the American Federation of Labor, organized in 1908, with branches in about fifty important cities.⁸⁸ Although some of the members of this federation are employed in the manufacture of building materials, as its name indicates it is restricted to unions in the metal trades, and therefore excludes a union like the Brick, Tile and Terra Cotta Workers' Alliance. It is, nevertheless, the purpose of the officers of the Metal Trades Department to work in close cooperation with the Building Trades Department, with the end in view of having both departments render such service to each other as would contribute to strengthening their constituent unions.⁸⁹ This organization has not been in operation long enough to justify an estimate of its effectiveness, but there can be little doubt that its continued existence means greater restrictions upon the use of materials.

Trade federations exert another great influence by assembling into common council the unions of allied industries. Here unions which formerly existed independently of one another have a forum for discussion, and are enabled to obtain a knowledge and an appreciation of their neighbors' grievances that they could not obtain to such advantage under any other conditions. An interesting illustration of this aspect of the influence of a trade federation is furnished by the experiences of the Allied Printing Trades Council with other unions. The Allied Printing Trades Council is composed of the Typographical Union, the Printing Pressmen, the Stereotypers and Electrotypers, the Bookbinders, and the Photo-Engravers. At a conference in 1908 the effect of the council could be seen by the adoption of a resolution which recommended "whenever practicable" the refusal by the constituent unions to use "photo-engraved plates unless such plates were stamped with the union label

⁸⁸ For a more detailed description of the Metal Trades Department see Stockton, p. 109.

⁸⁹ Proceedings of the Fourth Annual Convention of the Metal Trades Department of the American Federation of Labor, 1912, pp. 8, 11.

of the International Photo-Engravers' Union."⁹⁰ In the same year the influence of the council was extended even further when the International Brotherhood of Papermakers was permitted to send a representative to the meetings of the joint conference board of the council; this representative, although he had a voice in matters affecting his union, had no vote. This conference, however, adopted a tentative agreement with the Papermakers' Union which provided that the members of the Allied Printing Trades Council would use their good offices in encouraging the use of union-made paper if the Papermakers would make no demands that would involve them in contests with employers because of the use of non-union paper.⁹¹ Thus the contact afforded by the membership in a federation has brought about in a short while a moderate degree of discrimination in the choice of material. After three years, furthermore, the representative of the Papermakers' Union requested full membership in the council because the union "desired to become more closely affiliated with the printing trades."⁹² Although this request was not granted, it is reasonable to believe that in the course of time the council may adopt resolutions in regard to the paper to be used by the printing trades similar in purport to that which was adopted in 1908 to regulate the use of photo-engraved plates.

Disregarding for the time being the effect of judicial decisions (and they are of great significance) and the influence exerted upon the operation of the transportation boycott by the policy of the Teamsters' Union, the conclusion is that there is a marked increasing tendency for trade unionists to question the source and destination of materials.⁹³ Al-

⁹⁰ The International Bookbinder, June, 1908, p. 216.

⁹¹ Ibid.

⁹² Ibid., March, 1911, p. 114.

⁹³ This tendency, of course, becomes the stronger the more intense is the desire of union members to eliminate the non-unionist from industry. It is accordingly stated that "for years the American Federation of Labor has been striving to bring about alliances among national unions. At present the Federation seems to have in view the formation of 'departments' in every group of allied

though the present conditions may not realize the ideal of the Industrial Worker of the World who believes that "when the Electrical Workers are on strike, Garment Workers should refuse to run machines driven by power furnished by scab electricians ;"⁵⁴ or that of the socialist propagandist who states that, under an industrial system of organization, the crews of the trains that bore weapons to the "minions" of the coal-mine operators during the recent strikes in the West Virginia coal-mines would themselves have been called out on strike, the fact remains that a combination made up of strong trade unions capable of enforcing their demands and of trade federations inculcating in their members the desirability of sympathetic action presents a system perhaps better adapted to the rejection of materials than does industrial unionism.⁵⁵

trades affiliated with it. By doing this the machinery is provided for more vigorous and more extensive discrimination against the non-union man" (Stockton, p. 121).

⁵⁴ Weekly Bulletin [Garment Workers], March 30, 1906, p. 4.

⁵⁵ The possibilities of the boycott on materials have not been overlooked by the critics of trade unionism. Thus one writer states: "The consummation of such a scheme [the boycott of non-union trim] would compel the mines which produce, the smelters which refine, the foundry which molds, and the factory which assembles and polishes, to reject all non-union men before the finished product could be affixed as a lock or a knob to the door of one of our marvelous office buildings. The same would be true of the lumber from the forest, the stone from the quarries, the glass of the windows and the bricks of the walls. All merchandise would be proscribed which had been tainted by the touch of the persecuted non-union man" (Paine Lumber Co., et al., v. United Brotherhood of Carpenters and Joiners, Brief on Behalf of Complainants—Appellees, p. 38).

CHAPTER IV

THE BOYCOTT ON COMMODITIES

A close analogy exists in one respect between boycotts on materials and boycotts on commodities. The grievances, fancied or real, which cause the imposition of boycotts on goods that enter into daily consumption are the same as those which impel a union workman to reject unfair materials or tools. In 1896 the Knights of Labor imposed a boycott on machine-made shoes, because these shoes were said to be driving hand-made shoes from the market.¹ Even before this, as early as 1885, the Can Makers had begun their campaign against the sale of machine-made cans.² Similarly, the white broom makers in San Francisco, in order to meet the destructive competition of Chinese broom makers and of convicts, frequently imposed boycotts upon brooms manufactured by Chinese or by convicts,³ and in such unions as the Hatters and the Garment Workers the boycott and the label have been frequently invoked against the products of immigrant and prison labor.⁴ The boycott on commodities, then, like the boycott on materials, constitutes a weapon designed originally as a "means of combating specific forms of competition to which particular organizations were exposed."

Here, however, the analogy ends. The boycott on materials can be effectively carried out only by homogeneous groups of organized workmen, whereas that on commodities and persons is essentially an appeal to heterogeneous assemblies of consumers. The boycotting unit in the boy-

¹ *Journal of the Knights of Labor*, January 30, 1896, p. 1.

² Spedden, p. 18.

³ *The Broom Maker*, December, 1901, p. 11; May, 1902, p. 84; July, 1902, p. 112.

⁴ Spedden, p. 16.

cott on materials is a trade union or shop comprised of closely associated individuals or trades; in the boycott on commodities, on the other hand, the unit is the central labor union or the city federation, bodies composed of trades as unrelated as the building trades and the printing trades and of individuals as different in social status and in temperament as the hod carrier and the bookbinder. Moreover, the unit in the boycott on commodities is often so extended as to include consumers who are not even formally affiliated with the labor movement but whose support is obtained by appeals to their sentiments of sympathy or of justice.

Although there are no accurate statistical data from which to estimate the relative frequency of the boycotts on materials and on commodities, there is little doubt that the boycotts on commodities and persons are by far the more numerous. The unfair lists published in the *American Federationist*, which often contained more than one hundred names, were devoted almost exclusively to notices of boycotts on cigars, shoes, beer, and many similar articles of consumption. The same is true of the lists published in other labor journals. Nor is this surprising. Indeed, there obtain certain considerations of expediency and necessity which account not only for the absolute frequency of the boycott on commodities, but also for its relatively greater frequency.

(1) When a member of a labor union enters upon the boycott of a bakery, for instance, he suffers as the result of his participation in the boycott the slight inconvenience that may attend the purchase of his bread in a bakery that is perhaps farther from his home than is the boycotted bakery. Indeed, in all such boycotts, wherever there is a suitable substitute for the boycotted commodity the participants rarely experience significant losses. Participation in a boycott on materials, however, demands a greater self-sacrifice. The bookbinder who boycotts unfair gold-leaf in sympathy with the Gold Beaters must be prepared to resign his position to the bookbinder who does not discriminate between

fair and unfair gold-leaf. The stone cutter who boycotts machine-cut stone has often yielded to the stone cutter who willingly works it. In fact, the mechanism of the boycott on materials is characterized by strikes, of longer or shorter duration depending on the strength of the union involved, during which attempts are made to replace the strikers who refuse to use unfair materials, by non-union workmen, who have no such scruples. It is natural, therefore, that the boycott on commodities, which involves little cost to its perpetrators, should be more popular and more generally employed than the boycott on materials, which is often marked by significant losses to those involved in its prosecution.

(2) Walter Gordon Merritt states in a recent article that the American Federation of Labor with its membership of 2,000,000 controls the purchasing power of 10,000,000 consumers.⁵ Disregarding the fact that the American Federation of Labor cannot exercise such complete control either over the purchases of its 2,000,000 members or of their 8,000,000 relatives, friends, and sympathizers as Mr. Merritt intimates that it does, it is, nevertheless, true that the labor movement in America presents a vast purchasing power which has often responded to the influence of labor leaders. The existence of such a large number of consumers, directly affiliated with one another in a national organization of laborers, must have the effect of encouraging boycotts which will not be limited to single shops or trades, but which, overleaping trade boundaries, will enlist the support of all organized labor. Such boycotts are, of course, those which are imposed upon articles of general consumption and not those which affect the use of tools and raw materials.

(3) Finally, many situations arise where either the weakness or selfishness of groups of organized workers or the unorganized state of the laborers in the industry makes it impossible to employ the boycott on materials and necessitates the use of the boycott on commodities. A situation of

⁵ "The Closed Shop," in *North American Review*, vol. cxc, p. 66.

this kind is well illustrated in the struggle of the International Wood Workers' Union with Atwood Brothers, manufacturers of racks and boxes. As a result of the refusal of this firm to recognize the woodworkers' union, a boycott was placed on its product. One of the largest customers of the firm was the Walter Baker Cocoa Company, which bought annually one third of the output of the firm. In this case it was not possible to obtain the support of the laborers in the cocoa factory in the form of a refusal to pack Atwood boxes. The Brockton Central Labor Union therefore initiated a boycott on the cocoa of the Walter Baker Company, with the intention of destroying the market of that firm. The accomplishment of this end meant at the same time the loss by the Atwood Company of its most valuable customer.*

The Coopers frequently pursue a similar mode of attack. When the Brewery Workmen refuse to boycott unfair coo-
perage, the Coopers will declare a boycott on the product of the brewery that buys unfair coo-
perage, and will in that manner, invoking the aid of the more sympathetic consumer, substitute for the boycott on materials the boycott on commodities. There are, of course, many instances in other unions of the declaration of boycotts on commodities in those cases where there are no organized workmen, or where the organized workmen are unwilling to do the boycotting in an early stage in the manufacture of the commodity. And these occurrences are made all the more likely because of the fact that practically every raw material emerges sooner or later in the form of a consumers' goods. The restricted sphere of labor organization and the conservatism of some unions, the consciousness in all unionists of the power that inheres in organized labor as a multitude of consumers, and finally the relatively low cost to the participant of the boycott on commodities are the three important factors that have contributed to the frequent employment of that form of boycott.

* A. Lord, *An Illegal Boycott*, p. 29; *Stove Mounters' and Range Workers' Journal*, September, 1905, p. 253.

It has been intimated that another important factor in the use of the boycott on commodities is the organization of retail clerks.⁷ They, it is said, can strengthen the boycott "by giving prominence and recommendation" to fair articles or by expressly advising against the purchase of unfair articles. As early as 1894 the president of the Retail Clerks' Union of Chicago suggested that the best method of assuring the success of a boycott on consumers' goods was by organizing the clerks in retail stores, and thus enlisting their aid in preventing the purchase of boycotted commodities.⁸ From time to time the clerks' union has taken action which was intended to further particular boycotts. In 1903, for example, in a resolution boycotting the National Biscuit Company, it was stated that "the local organization, particularly those of the grocery clerks, can be of service in this fight against one of the largest corporations in the country."⁹ The boycott notice in the following year of the boycott by the United Garment Workers of the product of the Rochester Clothing Combine was accompanied by the admonition that every "retail clerk should remember his obligation 'to sell union-made' goods in preference to those non-union made."¹⁰ A request, too, from the Iron Molders' Union of Leavenworth, Kansas, that the clerks should use their influence to sell only union-made stoves and should hinder the sale of stoves of an unfair firm was answered by the expressed hope of the International Union that the publication of the boycott notice would draw from the retail clerks the support that the Iron Molders desired.¹¹

While it is no doubt true that strong organizations of retail sales agents would constitute formidable allies in prosecuting boycotts on commodities, in the United States such organizations have not attained great strength. The

⁷ W. G. Merritt, *The Neglected Side of Trade Unionism, The Boycott*, p. 4.

⁸ *Journal of the Knights of Labor*, June 14, 1894, p. 3.

⁹ Proceedings of the Eleventh Convention, in *The Retail Clerks' International Advocate*, July, 1903, p. 43.

¹⁰ *Retail Clerks' International Advocate*, July, 1904, p. 18.

¹¹ *Ibid.*, April, 1904, p. 30.

Retail Clerks' International Protective Association has been for the greater part of its existence so concerned with protracting its own life and extending its own organization that it has been able to devote little time or energy to supporting the boycotts of associated organizations.¹³ Only when a labor union has acquired considerable strength can it afford to become involved in disputes of no immediate concern to itself. Accordingly, we find that the majority even of those notices of boycotts that are published in the clerks' journal are couched in terms of mild recommendation rather than of forceful command, and they have consequently had little influence in securing the success of boycotts on commodities.

Boycotts on commodities are, in general, effective only when imposed upon such goods as are consumed in large quantities by the working classes. A boycott on a Chickering grand piano would obviously be ineffective because the purchasers of that instrument would not be, as a rule, members of the laboring or wage-earning class. We find, therefore, that the majority of the boycotts are imposed upon such articles of clothing, food, or furniture as are likely to form a part of a workingman's budget. The boycott has been employed frequently and effectively by the Garment Workers on the product of large clothing firms. When, in 1891, the garment workers were forced out of employment by the gigantic lockout inaugurated by twenty-one clothing firms of Rochester, the Knights of Labor initiated a country-wide boycott on the product of these firms. After a few weeks they reported that by their activity they had induced dealers throughout the country "to cancel over

¹³ The constitutions of the Retail Clerks' International Protective Association contain no provisions that either require of or recommend to the members of the union their support in urging the sale of fair commodities or in preventing the purchase of the unfair. Spedden points out that local unions of the clerks in certain cities in Ohio, Pennsylvania, and Illinois, where the clerks are better organized, have adopted rules providing "that each union clerk shall be fined for selling certain kinds of goods not bearing the label" (p. 69). He agrees later, however, that the "clerks are in most cities very weak and could not enforce such rules."

\$500,000 worth of orders."¹³ In their struggles with the clothing manufacturers in Chicago in 1901 and 1905 the United Garment Workers again prosecuted vigorous boycotts. The strike of that union against Marx and Haas, of St. Louis, in 1910, was supplemented by a boycott in which the support of every available agency was enlisted in the effort to destroy the market of the firm. It was reported in the *Journal* that all the general organizers of the union were at work, and that special committees of the local unions were on the road and were "to remain in the field until the battle was won."¹⁴

That these boycotts had any chance of success was, of course, due to the willingness of organized labor and its supporters to discriminate in their purchases between fair and unfair goods. The Hatters' Union, which had in 1902 a membership of only six thousand, was able because of this ability to enlist the sympathy of laborers throughout the country, to wage successful boycotts against firms which supplied national markets. The boycott of the union against the Roelof Hat Company was claimed to have "injured the business of that company to the extent of \$250,000."¹⁵ And Mr. Loewe of D. E. Loewe and Company, testifying in what was destined later to develop into one of the most famous cases of its kind, stated that the sales of his business in 1902, one year before the imposition of the boycott, were \$400,000. In the year of the boycott, however, sales were from \$160,000 to \$170,000 less.¹⁶

In the hands of the Brewery Workmen the boycott has been an indispensable weapon. Again and again in the history of the union it was able to cope with powerful employers' associations only through its ability to prevent the sale of the brewery products. From the boycott in Cin-

¹³ *Journal of the Knights of Labor*, April 2, 1891, p. 1; April 30, 1891, p. 1.

¹⁴ *Weekly Bulletin* [United Garment Workers], May 20, 1910, p. 3.

¹⁵ *Journal of the United Hatters*, January, 1902, p. 7; May, 1902, pp. 20, 22.

¹⁶ *Ibid.*, November, 1903, p. 1.

cinnati in 1881¹⁷ to the present day that club has been often used against large and wealthy firms. In the words of a historian of the Brewery Workmen's Union: "The boycott has played a most important part in the history of the brewery workers' movement in America, more important perhaps than in that of any other trade. The ten-year boycott against the New York 'Pool Beer,' which was decided chiefly by the attitude of the New England workingmen; the boycott against the St. Louis Beer, which ended favorably for the brewery workers on account of the strong support of the Knights of Labor in the South; in short, every one of the greatest struggles of the brewery workers was decided by the boycott, which proved the strongest weapon in the hands of the workingmen in these conflicts."¹⁸

One of the most extensive and spectacular boycotts in recent years was that begun in 1906 and continued for several years thereafter against the Buck's Stove and Range Company. It was precipitated by the refusal of that company to continue the nine-hour working day of the metal polishers and by the violation of an alleged agreement between the company and the International Brotherhood of Foundry Employees.¹⁹ At the 1906 convention of the American Federation of Labor application was made by the Metal Polishers' Union that the firm be placed on the unfair list of that organization. In accordance with the customary procedure, the matter was referred to the executive council of the Federation for adjustment. Vice-President Valentine was designated as the representative of the council for the purpose of conferring with the Buck's Stove and Range Company, and, if possible, of effecting an amicable settlement of the dispute. Although the endorsement of this boycott meant the infliction of great injury upon the union iron molders who were at that time employed by the Buck's Stove Company, Mr. Valentine, who was also

¹⁷ Schlüter, p. 100.

¹⁸ *Ibid.*, p. 238.

¹⁹ Report of President, in Proceedings of the Twenty-seventh Annual Convention of the American Federation of Labor, 1907, p. 35; American Federationist, September, 1910, p. 809.

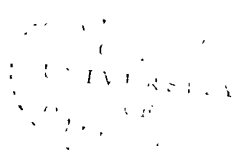
president of the Iron Molders' International Union, reported that the attitude of the company precluded the possibility of a peaceful settlement, and therefore recommended that the boycott be endorsed.²⁰

It is probable that, under normal conditions, the boycott on the product of the Buck's Stove and Range Company would have been neither more nor less effective than any of the other numerous boycotts the notices of which appeared monthly in the *American Federationist*; nor would there have been any occasion for the involved legal complications which later actually arose. There was present, however, a combination of circumstances that was directly responsible in shaping the future course of the boycott. Mr. J. W. Van Cleave, president of the Buck's Stove and Range Company, was at the same time president of the National Association of Manufacturers and vice-president of the Citizens' Alliance.²¹ Both of these organizations had been notoriously antagonistic to organized labor. Even after the imposition of the boycott, Mr. Van Cleave, in both his official and private capacity, further emphasized his hostility to union labor by delivering many speeches against the system of organized labor and against its leaders. The report was spread, too, that the National Manufacturers' Association was raising a fund of \$1,500,000 to be used under the direction of Van Cleave in an attempt to disrupt the labor organizations of the country.²² The publication of these statements in the *American Federationist* and in other journals soon resulted, of course, in arousing among all trades unionists and their sympathizers feelings of the strongest resentment against Van Cleave and his company. The con-

²⁰ Report of President, in Proceedings of the Twenty-ninth Annual Convention of the American Federation of Labor, 1909, p. 17. The Buck's Stove and Range Company first appeared on the unfair list of the American Federation of Labor in the *Federationist* of May, 1907.

²¹ *Buck's Stove & Range Company vs. American Federation of Labor*, et al., Pleadings, Preliminary Injunction Order, Opinion of Justice Gould, and Testimony on Hearing for Permanent Injunction in the Supreme Court of the District of Columbia, p. 360.

²² *Ibid.*, p. 368.



sequence was a vigorous general boycott in all those sections of the country where labor organization was strong. Soon the boycotted firm began to receive letters from its customers stating that unless the company could settle its dispute with organized labor they would be forced to have their orders filled by firms against whom union labor had no grievance.²³ The company, however, did not yield; instead, recourse was had to the courts, which issued injunctions restraining the American Federation of Labor and its affiliated bodies from further prosecuting the boycott. The case was appealed, and Gompers and two of his associates²⁴ were accused and convicted of having violated the injunction.²⁵

In the midst of this litigation and turmoil, however, Van Cleave died,²⁶ and the Buck's Stove and Range Company was reorganized under auspices friendly to union labor. But so deep rooted had been the passions aroused by the struggle that several official statements by President Gompers notifying union members that the boycott had been raised and that the newly organized firm was deserving of their patronage had to be issued for publication throughout the country before the boycott of the products of the firm was brought to an actual close.

Although a surface analysis would seem to indicate that, in general, the boycott on commodities will be effective in all communities where there is a large number of organized laborers, yet the facts show that in order to act as an effec-

²³ *Buck's Stove & Range Company vs. American Federation of Labor, et al., Pleadings, Preliminary Injunction Order, Opinion of Justice Gould, and Testimony on Hearing for Permanent Injunction in the Supreme Court of the District of Columbia*, p. 34 ff.

²⁴ John Mitchell and Frank Morrison.

²⁵ Gompers was finally sentenced to imprisonment for thirty days and the other two were fined \$500 each. These penalties were later lifted by the United States Supreme Court on the ground that the three year limit prescribed by the statute of limitations had expired when action was instituted against the defendants for contempt (233 U. S. 604).

²⁶ Van Cleave died May 15, 1910. See *American Industries*, August, 1910, p. 6.

tive boycotting agency, union labor must be not only numerous, but also highly localized. The presence in a city of many union members, scattered as individuals in different sections of the community and surrounded by people who have neither sympathy with nor understanding of labor's grievances, prevents that close personal contact and that easy exchange and discussion of information—not to speak of the impossibility under such conditions of scrutinizing the purchases of one's neighbor—which is essential to the success of a boycott. Where the laboring community is a closely knit, intimate assembly, the boycott is waged by collective efforts impelled by a collective conscience; where labor is scattered, the boycott is characterized by weak individual effort. In the first case the boycott is usually successful; in the second, its success is doubtful. Boycotts on commodities have, accordingly, been most effectively enforced in those places where the laboring population is in the majority and where, as for instance in mining communities, the members live in close contact with one another. Thus, Professor Barnett points out that "where the local labor federations are active and strong, as in the well organized mining and industrial towns of the middle west, the boycott is a more powerful weapon in the hands of the local typographical unions."²⁷ In 1900, too, the secretary of the Journeymen Bakers' and Confectioners' National Union remarked that in the mining districts there was a universal demand for the union label on cracker boxes and, therefore, a universal rejection of non-union products.²⁸ The Broom Makers, likewise, found that no "brooms could be sold in the mining towns of Illinois unless they bear the union label," and they further testified that the members of the United Mine Workers had exerted invaluable efforts in pushing the boycott on products unfair to the Broom Makers.²⁹

²⁷ *The Printers*, p. 270.

²⁸ *American Federationist*, June, 1900, p. 172.

²⁹ *Ibid.*, March, 1900, p. 70; *The Broom Maker*, February, 1902, p. 32.

The officers of American trade unions by no means ignore the futility of making an appeal to the general consumer in all cases of boycotts on commodities and permitting their activities to end there. On the contrary, they are fully alive to the fact that for many commodities there are special groups of consumers whose cooperation and active support are essential to the success of a boycott. It is not uncommon, therefore, to find that many unions, instead of waging a general boycott, attempt first to enlist the support of such groups of consumers. For example, in the boycott in 1895 against the Rand McNally Printing Company, the manufacturers of maps, school-books, and stationery, it was found that the heaviest purchasers of the products of the firm were "county boards, state officers and educational boards."³⁰ The result was that a general boycott, which would have been fruitless, was converted into a struggle in which political pressure and the concerted efforts of the unions were brought to bear upon public elective and appointive officials with a view of having them withdraw their valuable patronage from the unfair firm. Since then, this experience has been duplicated in many disputes of the International Brotherhood of Bookbinders with publishing companies.³¹

The frequent efforts of the labor movement to form an alliance with farmers' organizations is another aspect of the same situation. In addition to the substantial aid which such organizations can extend, which will be discussed later, they can be of great service in boycotts against firms, like the International Harvester Company, employing great armies of laborers, whose products find a market almost exclusively among farmers. For example, when a boycott was declared against the Studebaker Manufacturing Company, manufacturers of wagons, it was suggested that "the farmers' organizations could help by demanding fair wages in the making of farm wagons."³²

³⁰ American Federationist, June, 1895, p. 64.

³¹ See for example, the International Bookbinder, May, 1901, p. 8.

³² American Federationist, June, 1895, p. 63.

At times this appeal to special groups of consumers takes the form of requests by the unions to organized bodies that they exercise the pressure of persuasion on the purchasers of certain products. When the Metal Polishers imposed a boycott on the National Cash Register Company, there was discussed the advisability of appealing in particular to the Retail Clerks' Association and to the International Bartenders' League in order to obtain their support in preventing the sale of the registers.²³ Similarly, in 1911, the international president of the same union reported that he had gone "from Cleveland to Boston to attend the Bartenders' and Waiters' convention for the purpose of calling their attention to the great assistance they could render us [the union] in the installation and use of bar supplies."²⁴ Appeals of an analogous character have also been made to "Retail Liquor Dealers' Associations" of various localities in the belief that their members would divert their patronage from unfair firms. An appeal to another special group of consumers is illustrated in the boycott against a bedstead company. A request was directed to the hotels that ordinarily purchased the product of this unfair company that they should withdraw their patronage.²⁵

This discussion leads to the conclusion that, although "the boycott is a potent and effective weapon" when "the enemy is engaged in a business dependent for its success on the patronage and support of the consuming public," it

²³ The Journal [Metal Polishers, Brass Polishers, Brass Molders, and Brass Workers], February, 1902, p. 16.

²⁴ Ibid., June, 1911, p. 15.

²⁵ Ibid., June, 1900, p. 888. It may happen that a significant share of the business of an establishment can be ascribed to the custom of a single person whose earnings are in turn dependent on the support of a large number of consumers. In that case, when a boycott is placed upon a firm of this class, an effort is made by organized labor to effect the withdrawal of the individual's patronage. A case in point was the boycott on a bookbinding establishment which bound all of the books written by Ella Wheeler Wilcox. The local unions of the bookbinders were, therefore, notified to write to Mrs. Wilcox, who is notoriously friendly to labor, and to "request that she cease patronizing" the unfair firm (The International Bookbinder, November, 1901, p. 4).

exhibits its greatest effectiveness under two conditions: first, when a large proportion of the product of the firm is consumed by communities of laborers, and secondly, where there are special groups of consumers who feel that labor can in turn bring to bear upon them effective pressure of a political or economic nature. In both cases the result is obviously a substantial loss by the boycotted firm; and in the second case there is often the additional advantage that the cost of executing the boycott is much reduced, since the union avoids, at the outset at least, the necessity of advertising the boycotted goods among the great body of consumers.

A boycott on commodities falls primarily upon the products of firms with whom some section of organized labor has had difficulties. In this form the boycott is simple. It does not, however, long retain its original simplicity, but soon acquires extensive ramifications. Persons who were not even remotely connected with the dispute at its inception are dragged in and become themselves subject to boycott. This extension of a boycott upon an article of consumption usually emerges in the form of a boycott on the business that sells, among other things, the boycotted commodity. When a union, for example, boycotts hats, it does not content itself with refusing to buy of a haberdasher the commodity in question, but everything he sells becomes subject to boycott until he agrees to eliminate from his business the unfair product. In 1901 the Journeymen Bakers' and Confectioners' International Union, in accordance with this principle, imposed a general boycott upon all "stores, restaurants and hotels" that sold any of the products of the National Biscuit Company, which had itself been previously boycotted.³⁶ Where a retailer sells only one commodity or one principal commodity, the boycott on a business and the boycott on a commodity are, of course, equivalent. Where the commodity boycotted is a foodstuff

³⁶ Proceedings of the Twenty-first Annual Convention of the American Federation of Labor, 1901, p. 60.

or an article of clothing that is usually sold in conjunction with other articles, as is particularly the case with many commodities sold in the general merchandise stores of small towns, the boycott on a business is a far more effective weapon. In the first place, it is easier to teach the consumer to boycott a person than to boycott a commodity. In addition, it may play more serious havoc with his business than would a boycott on a single good. If the boycott is restricted to a commodity, a retail dealer, particularly when he has had long business dealings with the unfair firm, may often continue to keep the goods in stock on the theory that the trouble will soon blow over without his active participation. As soon, however, as the boycott is extended to his entire business, the probability of incurring substantial losses becomes so great as to force him at once to reject the unfair goods.

A boycott on a retail dealer who acts as a distributor of unfair goods is justified on the ground that his business is actually an agency of the boycotted firm and as such is automatically included in the original action. Often, however, the boycott is extended to cover persons and things that are not so obviously implicated in the original dispute. The stone cutters of Bedford, Indiana, for example, boycotted the hotel at which scab stone cutters stayed, and then threatened to boycott a theatrical performance because the actors boarded at the same hotel.⁸⁷ Similarly, in 1888, the Brotherhood of Locomotive Engineers boycotted the Democratic national ticket because the delegates to the national convention had ridden over the unfair Chicago, Burlington, and Quincy Railroad.⁸⁸ In their extension of boycotts to groups foreign to the original dispute, the theory of trade unions seems to be: first, that any one coming in contact in one capacity or another with a boycotted article countenances its sale and exposes himself to a boycott, and, secondly, that under conditions where the boycott cannot be effective upon

⁸⁷ Stone Cutters' Journal, April, 1906, p. 17.

⁸⁸ Journal of United Labor, June 30, 1888, p. 2653.

one object it is desirable to shift the ban to a closely or distantly related object.

Occasionally the members of firms whose products are not susceptible to the boycott are at the same time interested in other industries whose products are easily boycotted. In this event a boycott is imposed upon this new industry. In the early history of the American Federation of Labor a steel company of Pittsburgh refused to endorse the scale of the Amalgamated Association of Iron and Steel Workers. Inasmuch as the product of the company was such as not to enter into the budget of a laborer, it could not be effectively boycotted. A member of the firm of the steel company was, however, at the same time the joint owner of a large coffee plant. A boycott was therefore ordered on the product of this associated firm.³⁹ A slightly different situation was presented in the boycott against the Jamestown Street Railway Company of Jamestown, New York. Here there could be no effective boycott because no competitive route existed which passengers could use in preference to that which was to be boycotted. The owners of the street railway company happened, however, to be also the owners of an amusement park, from which patronage could be far more easily diverted than from a street railway line; the park was consequently promptly placed upon the unfair list.⁴⁰

The extension of the boycott by labor unions does not stop at the products of allied industries, but frequently assumes a personal aspect. Such boycotts appear either as attempts to isolate or ostracize individuals who have exhibited evidences of their hostility to labor, or as attempts to impose political boycotts upon such persons. When the Garment Workers were involved in 1905 in their severe struggles with the employers' association of clothing manufacturers of Chicago, the attempt was made to boycott one of the employers who was active in the direction of the employers' association by withholding from the hotel where

³⁹ Proceedings of the Third Annual Convention of the American Federation of Labor, 1888, p. 26.

⁴⁰ Proceedings of the Twenty-first Annual Convention of the American Federation of Labor, 1901, p. 132.

he was a guest fuel and articles of food. Effective carrying out of the boycott was made possible through the support of coal-wagon drivers and teamsters in other industries.⁴¹ This form of the boycott constituted practically a reversion to the type of boycott as practised against the Irish land agents. It had, however, a duration of only an hour in this case, and is, needless to say, not often employed. The political boycott, which is imposed upon candidates for public office who, in the conduct of their personal business, have been unfair to organized labor, is both more frequent and more effective. Thus, the owner of a bookbinding establishment in Baltimore had been for some time unfair to the local union of bookbinders, but the customers of the firm were such that it was impossible to wage a successful boycott on his establishment. When he became in 1913 the candidate for a municipal office, a vigorous political boycott was initiated against his candidacy; his defeat was later attributed by many to the opposition of organized labor to his candidacy.

The boycotts on newspapers afford the best illustration of the automatic and effective character of extensions of the boycott to others than those originally involved. Obviously a newspaper can be attacked in two ways. In the first place, its circulation can be reduced by an appeal to subscribers. Once the circulation is reduced, the newspaper becomes an undesirable or an ineffective advertising medium and it loses its advertisers. The process is, however, more often reversed, and this constitutes the second method of attack. The number of subscribers of an urban newspaper is usually large and scattered; it might, therefore, be a considerable expense to produce significant gaps in its subscription lists. Pressure is then put upon the advertisers; and if this is at all effective, the loss in revenue to the newspaper is so great that it must soon capitulate.⁴²

⁴¹ Weekly Bulletin [United Garment Workers], March 24, 1905, p. 3.

⁴² Sartorius v. Waltershausen states that in a boycott on a newspaper it is more important to concentrate first against the circulation rather than against the advertisers, for if the circulation falls

Under the Knights of Labor the boycott against newspapers and their advertisers was frequently imposed. In 1880 the Pittsburgh Daily Times published an account of the secret transactions of the convention of the Knights of Labor, which had been presumably overheard by a reporter; the Knights claimed misrepresentation, and boycotted the paper and all persons who advertised in or subscribed to it.⁴³ In the report on "Strikes and Boycotts" made at the convention of 1887 it was stated that many boycotts had been imposed on "local newspapers that were hostile to the order, or that were run with non-union men." "As soon as the united boycotters strike at the vitals of the newspapers, the columns of advertisement," the report continues, "the paper succumbs. In that case the offensive newspaper is read in the assemblies. All stores advertising in it are noted, and the merchants are politely and 'with many expressions of regret' notified by a special committee that no member of our organization will patronize or even enter their stores as long as they advertise their goods in a paper 'so unjust and so bitter against our Order.' . . . No retailer is willing . . . to pay a high price for advertisement whose only result is to drive hundreds of customers from his store,"⁴⁴ so he withdraws his advertisement and thus helps to make effective the boycott of the Order on the newspaper.

Simultaneous with and later succeeding the Knights of Labor, the International Typographical Union from 1880 on constantly employed the boycott on newspapers as a weapon in its fight for the organization of unfair newspaper shops.⁴⁵ The most famous of these boycotts was perhaps that imposed upon the New York Tribune in 1884.

off, advertising in that paper ceases per se (Die Nord-Amerikanischen Gewerkschaften, p. 242). He does not, however, take into consideration the relatively smaller cost involved in appealing to a few advertisers as against the expense involved in announcing the boycott to thousands of subscribers. In practice, nevertheless, both movements are carried on simultaneously.

⁴³ Proceedings, 1880, p. 236.

⁴⁴ Proceedings, 1887, p. 1881.

⁴⁵ Barnett, *The Printers*, p. 268.

Originally the Tribune had been the property of Horace Greeley, a friend of union labor and himself at one time the president of a local printers' union. The paper passed by sale into the hands of Whitelaw Reid, who in 1877 announced his hostility to the printers by ordering a reduction in wages. For a time the printers' union was unable to organize the Tribune office; but in 1883, after it had succeeded in enrolling in the union a few of the men in the office, an agreement was made between the Tribune, in conjunction with several other newspapers, and the local typographical union. In December of that year the Tribune broke the agreement. Several weeks later 7400 local unionists took up the boycott on the New York Tribune and on all who were connected with that paper. As a medium for the publication of news concerning the progress of the boycott and of articles encouraging its more vigorous application, the New York local union of printers founded a weekly newspaper called the Boycotter. While the fight was in progress, a presidential election was held in which Cleveland was opposed for the presidency by Blaine, the choice of the Tribune for that office; the subsequent election of Cleveland was attributed by members of the unions to the political boycott imposed upon Blaine following the support by the Tribune of his candidacy.⁴⁶

This boycott was followed by many others, some imposed by the International Union and others imposed and waged by local unions. In all, however, energetic and in the main successful efforts were made to force the withdrawal from the boycotted journals of profitable advertisements. In the boycott on the Los Angeles Times it was reported that the paper had lost more than three fourths of its out-of-town advertisers.⁴⁷ Likewise, in the boycott against the New York Sun there was published a list of department stores which had discontinued their advertisements, the paper thus losing a source of revenue that was peculiarly profitable be-

⁴⁶ Von Waltershausen, *Die Nord-Amerikanischen Gewerkschaften*, p. 244.

⁴⁷ *Retail Clerks' International Advocate*, April, 1903, p. 18.

cause of the frequency with which department stores advertise and because of the size of their advertisements.⁴⁸ It must be remembered, however, that success in boycotts on newspapers was obtained only after the unions had, on several occasions, carried on vigorous boycotts on the establishments of recalcitrant advertisers.⁴⁹

During the entire history of the employment of the boycott on commodities, efforts have been constantly made under the Knights of Labor to provide necessary auxiliaries to the boycott and under the American Federation of Labor to discover an adequate substitute for it. These efforts can be ascribed to the influence of several factors.

In the first place, the boycott is in itself, in the last analysis, an incomplete weapon; to be completely effective, it must be equipped with a complementary mechanism. Dissatisfaction with one firm implies satisfaction with another. Similarly, the boycott and the withdrawal of patronage from an unfair firm implies the throwing of that patronage to a fair firm. Furthermore, when a boycott is placed upon one commodity or business, it is necessary for those managing the boycott to have at hand a competitor whom or a substitute which they can recommend to their friends and sympathizers. For example, in the boycott by the Knights of Labor of the products of a leather syndicate, branches of a fair firm were established by the Order in Texas, Nebraska, and Kansas, so that it might be possible "to supply a fair article" when the purchasers were requested to refuse the goods of the syndicate.⁵⁰ The establishment by Mr. W. R. Hearst of the Los Angeles Examiner during the boycott by the International Typographical Union of the Los Angeles Times can be attributed to similar motives.⁵¹

⁴⁸ Journal of the United Hatters, June, 1901, p. 5.

⁴⁹ American Federationist, November, 1901, p. 485; Coopers' International Journal, June, 1903, p. 247.

⁵⁰ Report of the General Executive Board at the Twelfth Regular Session of the General Assembly of the Knights of Labor, 1888, p. 88.

⁵¹ Barnett, The Printers, p. 272.

In the second place, the opinion has often been voiced that the boycott defeats its own ends by attracting toward the boycotted firm the patronage of many consumers who are hostile to labor and who would gladly patronize firms which labor had declared unfair. In such a strain writes a correspondent to the *Journal of the Knights of Labor* in 1889. "The notoriety attending the imposition of a boycott," he contends, "very often proved a stroke of great good fortune to those whom it was intended to lead into paths of industrial rectitude. The clamor and noise formed a most valuable advertisement and drew upon the person or firm involved the general attention of labor's enemies; who to gratify an ill-concealed spite against organized labor threw their custom to offset whatever might be lost through the observance of the boycott."⁵² With this idea there is also linked the belief that it is more desirable and less costly to concentrate the energies of the union upon the advertisement of fair firms, because the publication of a fair list or the advertisement of goods bearing the union label accomplishes by peaceful means that which a boycott accomplishes only at the expense of much ill feeling and hostility.⁵³

Finally, a potent argument for the substitution for the boycott of a system for the advertisement of fair articles has been the legal objections that have been raised to the direct boycott. Although such obstacles had been continually interposed when a boycott was applied, yet they constituted no insurmountable barrier to the use of the boycott until the decision of the United States Supreme court in the *Danbury Hatters' case*, rendered on February 3, 1908.⁵⁴ This decision practically prohibited the publication of all unfair lists, and, therefore, again turned the attention of labor to the availability of fair lists as substitutes for unfair lists. At the convention of the American Federation of Labor in 1909 the executive council urged "each affiliated

⁵² *Journal of United Labor*, March 21, 1889, p. 2807.

⁵³ *Granite Cutters' Journal*, May, 1906, p. 10.

⁵⁴ *American Federationist*, March, 1908, p. 192. Report of President, in *Proceedings of the Twenty-eight Annual Convention of the American Federation of Labor*, 1908, pp. 15, 80, 226.

organization to more thoroughly advertise the names of firms which employ union labor and conduct their establishments under sanitary conditions."⁸⁵ In that same year the Union Label Trades Department of the American Federation of Labor, comprising thirty-seven national and international unions, was organized "to devise means for the economic, effective, and comprehensive distribution of products bearing union labels."⁸⁶

With the Knights of Labor the plans for creating markets for the friends of organized labor as a complementary device to the destruction of the markets of their enemies reached a high stage of development. By the publication of fair lists, or white lists of fair industry;⁸⁷ by the establishment of consumers' circles;⁸⁸ by the adoption of many labels, which through special agreement were published in the journals of the Farmers' National Alliance and Industrial Union and of the Citizens' Alliance and in other agricultural and industrial papers;⁸⁹ and by the inauguration of many cooperative schemes, the Knights of Labor were continually making vigorous efforts to extend the markets of fair employers and to make it profitable for such employers to become identified with the Order. By March, 1889, the vague, uncertain attempts of previous years had crystallized into a definite policy, with a new term coined to describe its intent: "As the boycott denoted the more or less rigid exclusion of our enemies from the support, we, as consumers, had the power to give, so . . . the term anti-boycott designates directly the opposite policy of confining our patronage exclusively to our friends."⁹⁰

The term anti-boycott can of course be used to describe any system of fair lists through which is intended the advertisement of the products of fair employers. Disregarding their cooperative schemes, which at times assumed great

⁸⁵ Proceedings, p. 109.

⁸⁶ Ibid., p. 90.

⁸⁷ Journal of the Knights of Labor, July 24, 1890, p. 4.

⁸⁸ Constitution, 1899, Sec. 39.

⁸⁹ Journal of the Knights of Labor, May 26, 1892, p. 2.

⁹⁰ Ibid., March 21, 1889, p. 2807.

complexity, it may be said that the fair lists of the Knights of Labor bear the marks of possessing greater effectiveness than is the case with the majority of such lists. The fair list, as it usually appears in a trade-union periodical, has ordinarily only a negative effect. Consisting, as it does, of an enumeration, frequently too long, of merchants whose only virtue is the fact that they have not openly antagonized the particular labor organization, it is not likely to arouse any great enthusiasm in the subscribers to the journal. When, however, there is appended to the notice of a boycott a list of fair merchants who have in specific cases refused to deal with the boycotted firm, and who have in fact performed the double service of employing union men, which is the service of all fair employers, and of refusing specifically to deal with the non-union firm, the moral effect of such a notice will undoubtedly be much greater than that of the ordinary fair list. The employers included in the customary exhaustive fair lists are regarded as merely passive supporters of the Order; on the other hand, the fair employer whose name is included in these special fair lists is considered as active a supporter of the organization as is any member who openly refuses his patronage to the unfair firm. Accordingly, when the members of the Order were urged to buy the tobacco of the Drummond Tobacco Company, because that firm had agreed not to handle any goods made by the Enterprise Foundry the manufacturer, among other things of tobacco cutters;⁶¹ and again, when in the boycott of a shoe firm a list of thirty-four local merchants was appended who had refused to handle the goods of the boycotted firm until the differences between the firm and its employees had been satisfactorily settled;⁶² the response from the members of the organization should have been more general than that following the insertion in the journal of a list of merchants who were fair in that they were not openly

⁶¹ Journal of the Knights of Labor, June 6, 1889, p. 2850; July 25, 1889, p. 4.

⁶² Ibid., August 30, 1888, p. 2690.

fighting the Order or in that they were employing its members.

The extension of the markets of union firms, or of firms that are friendly with labor organizations, has also had a considerable development under the American Federation of Labor, but the greatest advance has been made in the extensive application of the union label. At the convention held in 1894 there was established a system of label lecturers "to advocate the exercise by labor of its influence in compelling the production of union-made and union-labelled goods."⁶³ Since that time substantial increases have been made in the output of commodities bearing the union label. With a view to augmenting the number of possible purchasers of fair commodities, efforts have been made from time to time to form alliances with various farmers' organizations, which were said to be "especially efficient in the sale of label made products."⁶⁴ It is likely, unless recent judicial opinions and statutes are so modified either by future judicial dicta or by amendatory legislation as to permit the publication of the names of unfair firms and a description of their products, that the efforts of unions will be redoubled in urging patrons to buy from fair establishments; and signs of great activity in this direction have already been evidenced in the establishment of the Union Label Trades Department and in the success of that department in spite of the few years of its existence.⁶⁵

Regarded, however, as a substitute for the boycott, the agitation for the purchase of fair goods presents several objections. In the first place, there are industries or sections of industries which have long defied the labor organizer; in such cases the fair or union establishments are either non-existent or are so few in number and have such limited mar-

⁶³ American Federationist, January, 1895, p. 264.

⁶⁴ Proceedings, 1909, pp. 104, 230.

⁶⁵ For a more detailed description of the work of the Union Label Trades Department and for data showing the numerical increase in the use of the label, see Proceedings of the Thirty-first Annual Convention of the American Federation of Labor, 1911, pp. 27, 103; American Federationist, December, 1911, pp. 976, 977; Proceedings of the Thirty-second Convention, 1912, p. 24.

kets that the publication of a fair list is impossible and, if possible, would be useless. A condition of this kind exists in the collar industry. Another objection is the purely mechanical inferiority of a fair list to an unfair list. Unless the union which publishes the list is willing to slight friendly establishments, the fair list must be as exhaustive as possible, and in that form it assumes such unwieldy proportions that reference to it becomes an unpleasant burden.

Finally, considerable difficulty is often experienced in defining a fair firm. When at the convention of the American Federation of Labor in 1904 it was resolved that the American Federationist should not publish the advertisements of unfair firms, the committee held that "if the introducer of the resolution contends that no firm should be advertised unless they handle union goods exclusively, it was of the opinion that such advertisements are not to be obtained."⁶⁶ Furthermore, when there was discussed before a convention several years before the advisability of publishing a fair list that would contain only the names of those firms whose products are "handled by union men throughout," a delegate strongly opposed a list so constituted on the ground that there was scarcely a "firm that was friendly to organized labor that would be put on the fair list," and, in addition, that "if adopted it would compel his craft to take every firm from the fair list."⁶⁷ The plan that was finally adopted provided for a list open only to those firms all of whose employees are members of the trade union of their craft.⁶⁸ Disregarding these difficulties, however, one would still have great hesitancy in denying the superior effectiveness of a concerted, vigorous assault, with its ability to arouse the passions and active enmity of thou-

⁶⁶ Proceedings, 1904, p. 174.

⁶⁷ Proceedings, 1898, p. 133.

⁶⁸ Proceedings, 1899, p. 160. A census of establishments in the United States would reveal at the present time, first, a number of firms specifically unfair to labor; secondly, a larger number of firms designated as fair; and finally a third category, probably more inclusive than a combination of the other two, of firms which are neither entirely fair nor unfair, but which number among their customers many unionists.

sands of unionists toward a few firms whose names, as the result of a country-wide propaganda, have become household words, over a long drawn out series of recommendations, embodied in a fair list, that is too often rewarded by the apathy and indifference of the workmen.⁶⁹

As was pointed out in the preceding chapter the type of organization predominant in a country at any time may conceivably exert an influence on the use of the boycott on materials in various industries. By a similar line of reasoning the attempt has been made to demonstrate the superiority of the industrial over the trade-union form of organization in the application of the boycott on commodities. Thus one writer says: "In the use of the boycott, the inter-trade form of labor organization enjoys a peculiar advantage. A trade union in any locality may cease purchasing an article without appreciably reducing its sale, since the proportion of consumers belonging to any single union is necessarily small; but an assembly of the Knights of Labor supported by a large part of the consumers in the vicinity wielded an influence proportional to the purchasing power of all members interested."⁷⁰ It is perhaps true that the boycott on commodities was more generally enforced under the Knights of Labor than under the American Federation of Labor. But to attribute this difference to the type of organization dominating each of these bodies is to neglect entirely the influence on the employment of the boycott of the personnel behind the two organizations, of the totally different spirit pervading their acts, and of the industrial condition of the country in two different periods. The Knights of Labor were emotional, high-strung, spectacular; within hardly more than a half decade the Order attained by the indiscriminate boycotting of its enemies a hitherto unheard of

⁶⁹ The fair list gains in importance, however, when it is noted that the boycott is a temporary expedient, whereas the fair list is a permanent institution.

⁷⁰ W. Kirk, "The Knights of Labor and the American Federation of Labor," in *Studies in American Trade Unionism*, edited by Hollander and Barnett, p. 368.

position of industrial and political power. The American Federation of Labor, while exhibiting on some occasions similar qualities, is, on the whole, characterized in its management by a more measured calmness and a greater deliberation. Beyond this no great virtue can be ascribed to the one or the other type of organization in the application of the boycott on commodities. Indeed, in this connection the distinction between industrial and trade unionism is more apparent than real. If under industrial unionism all industrial unionists in a city withdrew their patronage from an unfair establishment, then under trade unionism all trade unionists in a city, joined together under the central unifying authority of a central labor union or of a city federation, enforced the boycott with equal effectiveness.

CHAPTER V

THE MECHANISM OF THE BOYCOTT

Legislation adopted by American trade unions for the regulation of boycotts has been neither extensive nor complex. Although there has been since 1880 a gradual development of a few general, if obvious, principles in the theory and practice of the boycott, a great majority of the rules in force at one time or another have been dictated by the exigencies of the moment and inspired by the peculiar circumstances surrounding specific instances of the boycott. Unlike the union regulations affecting the strike and the closed shop, which are both severe and enforceable, the control of the boycott has been weak and inadequate; nor have the purchasers of unfair commodities met with the same drastic treatment that is ordinarily inflicted during strikes upon scabs and, in trades that enforce the closed shop, upon non-union laborers. It is, to be sure, frequently stated by unionists that the purchase of boycotted goods is as reprehensible as is the performance of labor in an establishment in which a strike is in progress. Rarely, however, in practice does the same odium attach to the one act as to the other.

The explanation of this difference is not difficult to find. It depends upon the fact that the strike deals with groups of workmen who can be definitely located in one or a number of establishments; the movements of every individual, in his capacity as a laborer in that industry, are constantly under the scrutiny of his fellow-workmen and of the union officials. An infraction of a union rule amid such exposed surroundings would result in the immediate discovery of the delinquency and in the prompt application of disciplinary measures. In his capacity as consumer, on the other

hand, the member of a union can be reached only with great difficulty. Only in small towns where purchases are made in one or two stores is it possible to adopt the same stringent measures with regard to the enforcement of the boycott as obtain in the management of the strike. The discovery of violations of the provisions of boycotts in a large city would necessitate the constant employment of a force of pickets whose size would soon assume unheard-of proportions. The recognition of these difficulties in enforcing the boycott has resulted not only in diminishing the number of legislative regulations but in tempering their severity. The boycott notice is for this reason persuasive rather than mandatory; it is couched in terms of appeal rather than in terms of threat. And, finally, it seeks to earn the support of workmen by the employment of methods designed to inspire loyalty and to enlist sympathy and not intended to invite fear.

Few unions have a definite boycotting policy which specifies the precise conditions under which the boycott will be levied. With unions like the carpenters, which impose boycotts upon materials as the result of a carefully conceived plan for the organization of mill workers, or with unions like the broom makers, which boycott the products of prison labor, the boycott is a weapon that is constantly in use, if not throughout the entire territorial jurisdiction of the union, at least in certain favorably situated localities. Occasionally, however, unions will discuss the adoption of a general or universal system of boycotting applicable to all industrial disputes. The most sweeping of such systems was that contained in a resolution presented to the convention of the Knights of Labor in 1884, providing that the Order "adopt a general system of boycotting instead of strikes," and further, that "wherever members of the Order were forced out of employment" a general boycott notice should be issued. The resolution was rejected.¹ More recently the Metal Polishers adopted a somewhat less general rule pro-

¹ Proceedings, 1884, pp. 728, 761.

viding that if any members of the union on strike were unable to win after sixty days, the president and the executive board of the union would be required to declare a boycott against the firm and, also, to declare the shop open.² Such action is exceptional, since most unions are accustomed to judge each case on its merits before deciding whether or not a boycott is advisable.

It must be inferred from the foregoing statement, not that labor organizations are not guided by general principles in the use of the boycott, but merely that the principle is not so rigidly formulated as in the rules just cited. All unions, for example, impose boycotts upon the products of firms when a strike against the firms has had an unsuccessful issue; few would be inclined arbitrarily to predetermine the limits of all strikes and the dates of inception of all boycotts. Such matters, in the majority of cases, instead of being subject to legislative regulation, become questions of administrative practice.

Under the present form of labor organization a boycott may be initiated by any one of the three following bodies: a local union, a national union or a federation of these organizations embodied in the American Federation of Labor. In actual practice the levying of a boycott by a local union is followed by application to the central labor union of that locality for endorsement of the boycott. Such a procedure is made necessary by the fact that no great injury can be done to a firm by the unassisted efforts of one local union, whereas within the limits of a single city the membership of a central labor union, composed as it is of the local unions of practically all trades, might constitute a considerable purchasing power whose support is highly desirable in a local boycott. Similarly, when the sale of the product of a firm is not confined to a single city or state, the endorse-

² Proceedings, in The Journal [Metal Polishers, Buffers, Platers, and Brass Workers], April, 1901, pp. 58, 70. The Granite Cutters, also, have the general provision that "any firm violating an agreement with any branch of our International Association shall be considered a non-union firm" (Constitution, August, 1905, sec. 101).

ment of the national union may be requested; and following that, the endorsement by the American Federation of Labor assures the advertisement of the boycott among the greatest possible number of organized laborers. A somewhat analogous condition was present under the Knights of Labor, where the possible boycotting units consisted of the local assemblies, the district assemblies, and the all-inclusive general assembly. The existence of these agencies and their activity in imposing boycotts has raised two problems which early became the subject for remedial legislation under both the Knights of Labor and the American Federation of Labor. One problem was concerned with what might be called the incidence of the boycott and the other with its frequency.

(1) The first point to be discussed relates to the incidence of the boycott upon workmen in localities other than those in which it was originally initiated. It was, for example, a matter of frequent occurrence under the Knights of Labor for a local assembly to boycott a firm whose business extended over the jurisdiction of several local assemblies, and to make efforts through advertisement and correspondence to have the boycott waged in other localities, in spite of the fact that the unfair firm and the other local assemblies were on friendly terms. Such a boycott, if successful, throws out of work union members in localities where the local assembly and the employer are at peace. To avoid such consequences, the rule was adopted in 1885 providing that "whenever any local or district assembly desires . . . to institute any boycott which affects other localities, local, district, or state assembly the facts must be gathered and presented to the Executive Board which, after careful examination, shall have the power to institute a general boycott."³ The difficulty was thus solved by a centralization of authority in the initiation of the boycott. Under the Amer-

³ Proceedings, 1885, p. 162. The committee on the boycott recommended, also, that local, district, and state assemblies should not be deprived of the right of instituting a boycott provided it affected no other localities.

ican Federation of Labor similar difficulties have been encountered; indeed, a number of national unions have adopted constitutional provisions removing from local unions the right of imposing a boycott without the consent of the national union.⁴ For example, in 1903 the amendment was suggested to the constitution of the Retail Clerks' Protective Association that "when local unions place firms on the unfair list, who have branch stores in cities other than that in which the union is located, before applying for assistance from sister locals," the boycott must be endorsed by the International Association.⁵ Similarly, it has been attempted on several occasions, but unsuccessfully, to enact legislation preventing the central labor union from imposing boycotts on firms "which manufactured and sold goods outside of the city in which" the central labor body was situated, or on firms doing an interstate business, unless the national union whose interests were involved consented to the boycott.⁶

Secondly, it frequently happens that a boycott results in the loss of employment by union laborers, who have no dispute with the firm, in the very locality in which the boycott is initiated. This is ascribable to the prevailing system of labor organization. The trade-union form of organization, which permits the employment in the same shop or establishment of the members of totally distinct labor organizations, exposes the members of the unions which are at peace with the employer to all the consequences of a successful boycott imposed by the union which is at war with him. Disputes arising from the initiation of such boycotts have been numerous. In 1901 the Piano and Organ Workers' International Union protested against the boycott imposed

⁴ Constitution of the United Garment Workers, 1898, art. xiii, sec. 12. Constitution of the Broom Makers' Union, By-Laws Covering Local Unions, art. ix, sec. 8, in the Broom Maker, April, 1903, p. 136. Proceedings of the Eighth Convention of the International Brotherhood of Bookbinders, in the International Bookbinder, June, 1902, p. 90.

⁵ Retail Clerks' International Advocate, June, 1903, p. 29.

⁶ Proceedings of the Twenty-third Annual Convention of the American Federation of Labor, 1903, p. 182. See also Barnett, "The Dominance of the National Union," p. 472.

by the Wood Carvers' Association on the Vose and Son Piano Company. The protest declared that out of a total of between two and three hundred employees there were only six or ten wood carvers who had a grievance against the company and their action in imposing a boycott had proved injurious to the great bulk of employees.⁷ In 1912 the Brotherhood of Painters and Decorators through the Buffalo central body boycotted the Brunswick-Balke-Collender Company; this boycott was protested by the Carpenters because the firm employed members of the Carpenters' Union.⁸ The Coopers and the Brewery Workmen were for a long time in the throes of disputes occasioned by the boycott by the Coopers of breweries which employed union brewery workers and by the boycott by the Brewery Workmen of breweries which employed union coopers.⁹ The possibility of such disputes is again suggested when a manufacturer or business man is interested in two concerns. Thus, the Western Federation of Miners urged upon the American Federation of Labor the boycott of the newspapers of W. R. Hearst, because, they claimed, he was the owner of the unfair Homestake Mining Company; the boycott was, however, opposed by Delegate Lynch of the Typographical Union on the ground that Mr. Hearst "employed members of the five international Trades in the printing industry in all of his eleven newspapers."¹⁰

The policy of the American Federation of Labor in such disputes has been to defer endorsement of the boycott until the unions involuntarily involved in it have been consulted.¹¹

⁷ Proceedings of the Twenty-first Annual Convention of the American Federation of Labor, 1901, p. 142.

⁸ Proceedings of the meeting of the Executive Council of the American Federation of Labor, reported in the *American Federationist*, July, 1912, p. 568.

⁹ Proceedings of the Seventeenth Annual Convention of the American Federation of Labor, 1897, p. 47.

¹⁰ Proceedings of the Thirty-first Annual Convention of the American Federation of Labor, 1911, p. 199.

¹¹ The attitude which the American Federation of Labor should take toward boycotts that affect union workmen has been the subject for much discussion at conventions. See, for example, Proceedings, 1897, p. 61; Proceedings, 1898, pp. 34, 131; Proceedings, 1901, p. 91; Proceedings, 1910, p. 292.

The International Association of Machinists, for example, in 1900 applied for permission to place the Western Electric Company of Chicago on the "We Don't Patronize" list; it was decided that final action on the case would be postponed until Mr. Gompers could communicate with the Wood Workers and the Metal Polishers.¹² In 1904 the Stove Mounters complained that their application for the endorsement of a boycott had been in the hands of the executive council for six months and no action had been taken; to this the chairman replied that the council would consider the matter after consulting with Mr. Valentine of the Iron Molders.¹³ The Stereotypers were actually refused the endorsement of a boycott against two Chicago newspapers because of the protest lodged by the International Typographical Union.¹⁴ As Secretary Morrison has stated it is the policy of the American Federation of Labor not to endorse any boycott where union labor is employed, unless the national union whose interests are concerned agrees to the boycott.¹⁵

(2) Labor organizations have early learned the wisdom of training the combined forces of their organization upon a few firms instead of scattering their energies in the prose-

¹² Proceedings of the Executive Council of the American Federation of Labor, reported in the *American Federationist*, August, 1900, p. 259.

¹³ Stove Mounters' Journal, January, 1904, p. 5. See also Proceedings of the Fourteenth Convention of the Stove Mounters' and Steel Range Workers' International Union, 1910, p. 8.

¹⁴ Proceedings of the Twentieth Annual Convention of the American Federation of Labor, 1900, p. 65.

¹⁵ Disputes similar to those described above have also arisen in the management of the union label. See Spedden, chapter vii, on Trade Jurisdiction and the Label. See also Stove Mounters' Journal, April, 1902, p. 437; June, 1904, p. 175. Complaints have also often been registered against the acceptance of the advertisements of unfair firms by the journals of affiliated unions. At the convention of the American Federation of Labor in 1893, resolutions were adopted condemning the publication of advertisements of boycotted firms in the journals or souvenirs of affiliated organizations (Proceedings, p. 55). Specific charges have at times been made against labor journals for accepting such advertisements; thus the Trainmen's Journal was criticised for publishing advertisements of the unfair Tobacco Trust (Proceedings of the Twenty-Sixth Annual Convention of the Massachusetts State Federation of Labor, 1911, p. 72).

cution of numbers of boycotts. Because this knowledge has, however, not penetrated to the rank and file of the labor movement, it is constantly found necessary to enact rules designed to limit the number of boycotts. Accordingly, at the convention of the Knights of Labor in 1885 Mr. Powderly in his report recommended the enactment of legislation for the regulation of this matter. "Too much indiscriminate boycotting has been indulged in throughout the Order," he stated, "and as a consequence that weapon has lost a great deal of its effectiveness."¹⁶ This state of affairs was partially remedied by placing the power of initiating general boycotts in the hands of the general executive board of the Order.¹⁷

Four years later, at a convention of the American Federation of Labor, attention was also called to this danger of promiscuous and ineffective boycotting. The discussion centered then around the report of the committee on labels and boycotts as to the wisdom of placing upon the unfair list a large number of breweries. In the subsequent debate it developed that the general sentiments of the delegates favored, instead of the boycotting of a score or more of breweries in a dozen different cities, the concentration on a few of the leading breweries that were opposed to organized labor.¹⁸ There was, however, no sign of a decrease in the number of boycotts. In 1894 the executive council appointed a committee to investigate the large number of boycotts that had been referred to it by the last convention.¹⁹ A few years later it was found necessary to limit the number of names which can be put on the "We Don't Patronize" list at any one time to three firms for each national union, one for each central body, and one for each local union directly affiliated with the American Federation

¹⁶ Proceedings, p. 19.

¹⁷ At the convention of 1886 the general executive board refused to sanction twenty-two boycotts which it was asked by various local assemblies to impose and make general (Proceedings, pp. 106, 137).

¹⁸ Proceedings, 1889, p. 40.

¹⁹ Proceedings of the meeting of the Executive Council, reported in the American Federationist, March, 1894, p. 19.

of Labor.²⁰ The effect of even this legislation was not encouraging, for the unfair list continued to grow.²¹

Several indirect methods were, however, still open to the American Federation of Labor by which it was possible to exercise at least partial control over the frequency of the boycott. There was first the general rule that before the name of a firm was placed on the unfair list an effort should be made by the executive council to effect an amicable settlement.²² Thus in 1900, when the Stove Mounters made application to place the Belleville Stove Works on the "We Don't Patronize" list, it was moved that the endorsement be withheld, while in the meantime President Gompers would endeavor to organize the stove mounters employed at that factory.²³ The American Federation of Labor will refuse also to endorse a boycott on the request of a union which itself breaks an agreement with the firm which it now seeks to boycott. This was illustrated in the application of the Metal Polishers in 1902 for the endorsement of its boycott on the National Cash Register Company, which was refused because the union had recently made an agreement with that company and had then deliberately broken it.²⁴

These regulations of the American Federation of Labor, it will be observed, tend to diminish not the total number

²⁰ Proceedings, 1901, p. 233; see also American Federationist, October, 1903, p. 1077.

²¹ The committee on the boycott again in 1906 emphasized the necessity of reducing the size of the unfair list; it then recommended that unions which had firms on the unfair list should report every three months to the executive council "what efforts they are making to render the boycott effective. Failure to report for six months shall be sufficient cause" for the removal of the boycotts "not reported on . . ." (Proceedings, 1906, p. 242). A correspondent to the Garment Workers' journal wrote that "the 'We Don't Patronize' list of the American Federation of Labor has grown to such proportions that the average man would require a thorough course in mnemonics in order to remember one-half of the firms whose names appear thereon" (The Weekly Bulletin, January 12, 1906, p. 3).

²² American Federationist, October, 1903, p. 1077.

²³ Proceedings of the meeting of the Executive Council of the American Federation of Labor, reported in the American Federationist, August, 1900, p. 259.

²⁴ The Journal [Metal Polishers, Buffers, Platers, Brass Molders and Brass Workers], September, 1902, p. 42.

of boycotts in this country, but merely the number that will appear on the "We Don't Patronize" list of that organization. The control of the number actually initiated and waged must be left to the national and local unions themselves. The experience of the American Federation of Labor in regulating the size of its unfair list has been the experience of its constituent national unions in restraining their local unions from imposing too great a number of boycotts upon objectionable employers. The Metal Polishers, for example, decided in 1905 to limit the number of boycotts which they would push to the five most important ones.²⁵ It was found impossible to carry out this policy, first, because of the difficulty of determining which five were the most important, inasmuch as the local unions whose boycotts were disregarded maintained that theirs were more important than the others; and second, because those local unions whose boycotts were being pushed showed no great alacrity in taking the names of their firms from the list and thus making room for new ones. The following year, therefore, the plan was adopted of granting to each local union one place on the list.²⁶ Even this plan was not entirely satisfactory, for in 1907 it was made compulsory for the local unions who have their boycotts endorsed by the international union to make a report at least every three months of the efforts being made to make the declaration of unfairness effective.²⁷ By this means it was hoped to reduce the number of boycotts.

How effective these various rules have been it is, of course, difficult to determine, because the lack of adequate data makes it impossible to study the quantitative course of the boycott in the last ten or fifteen years. On the one hand, the extension of organization and the realization of the power of that organization would tend to increase the number of boycotts; on the other, the growing conservatism

²⁵ The Journal, January, 1905, p. 53.

²⁶ Ibid., September, 1906, p. 7. The firm was to be chosen by the local union itself.

²⁷ Ibid., October, 1907, p. 6.

of labor organizations, the frequent admission by the labor leaders that the boycott should be sparingly used, and the conscious efforts made to keep the number within workable bounds, have had a restraining effect.

After all efforts at peaceful adjustment have failed and the boycott has been inaugurated and endorsed by the proper authorities, the first step in the actual waging of the boycott consists in the proper narration to the purchasing public of the causes of the dispute. Inasmuch as the success or the failure of this device depends upon the extent to which it can earn the sympathy of consumers, the importance of an effective boycott notice cannot be overestimated. Under the Knights of Labor the authors of such notices attained a high degree of skill. The articles in the *Journal of the Knights* were peculiarly effective in their ability to arouse class antagonisms and to interpret every disinclination of an employer to grant the demands of a particular union as an attack upon labor as a whole.²⁸ The same tactics were very skilfully, and perhaps justly, employed by Mr. Gompers in the campaign against the Buck's Stove and Range Company. Here, because of the frequent references to Mr. Van Cleave's hostility to the labor movement, it was possible to organize a far more effective boycott than if attention had been concentrated merely upon the grievances of the foundry employees against the Buck's Stove Company. All accounts of the grievances of a union which lead up to the imposition of a boycott are, of course, not written, but a great many are communicated orally to customers of the unfair firm by boycott committees or agents who visit these

²⁸ An example of an effective boycott notice is the account published by the Metal Polishers of their grievances against the National Cash Register Company. The narrative goes back to 1890, when the present superintendent of the Cash Register Company, then an employee of the Yale and Towne Company, had been instrumental in stirring up labor troubles. A description follows of the activities of this old enemy in his new berth. The impression left upon the reader is that the welfare of the labor movement depends in great part upon the elimination of this individual (*The Journal*, September, 1901, p. 4).

customers in an effort to make the boycott effective. Here, too, the attempt is made to play upon the customers' sympathies. In a boycott against the Royal Mantel Company, for example, one such committee which had been calling on the local dealers reported that "they did not threaten any of them, but used the argument that the horrors of slavery in its halcyon days were not worse than the treatment received by the employees of the Royal Company."²⁹

Simultaneously with the appearance of these boycott notices, the names of the boycotted firms appear throughout the country in the various unfair or "We Don't Patronize" lists which are published in American labor journals. When the Order of the Knights of Labor was at the height of its power, the number of names upon its unfair list, published in the weekly journal of the Order, rarely exceeded five or six. There was, however, in addition to this unfair list, the Order's Black Book, which contained the names of those firms boycotted by the local and district assemblies, and which was to serve as a book of ready reference for the members of the Order.³⁰ The "We Don't Patronize" list of the American Federation of Labor was before 1908 published monthly in the *American Federationist* and in several of the journals of national unions. The number of firms contained in that list has varied from only a few to more than one hundred and twenty-five. The majority of the National Unions also have their own unfair lists, some of which are printed in their journals. The sizes of these lists differ, of course, in different unions and at different times. The Coopers, for example, had at one time about seventy names upon their unfair list,³¹ and the Metal Polishers at another time had thirty-three.³² The central labor bodies have their unfair lists, which may be published in the paper of the body, if it has one, or may merely be posted

²⁹ The *International Wood Worker*, May, 1896, p. 132.

³⁰ *Journal of the Knights of Labor*, October 16, 1890, p. 4.

³¹ *Coopers' International Journal*, February, 1906, p. 117.

³² *The Journal*, September, 1906, p. 7.

upon the bulletin board where they can be read by all the members of the central organization.³³

The form of the unfair list of a single national union is simple. It usually consists of the title "Unfair" or "We Don't Patronize," and, below the title, an enumeration of the unfair firms and their locations. In the unfair list of the American Federation of Labor, which is composed of the firms boycotted by unions in many different industries, the firms are classified by the character of their products, as for example, clothing firms, manufacturers of food stuffs, and so on. In the majority of unfair lists no greater prominence is given to one firm than to another. When, however, a union is entering upon a very important boycott, it is customary to place the name of a single unfair firm or of a group of firms in a more conspicuous position. Thus, in the boycott of the National Cash Register Company by the Metal Polishers there was printed in large green letters at the top of the cover page of the journal of the union the words, "National Cash Register Boycotted"; and distributed throughout the journal, amid various articles, was scattered the admonition "Remember the National Cash Register is Boycotted."³⁴

Following the court decision in 1908, cited in an earlier chapter,³⁵ it was found necessary to discontinue the publication of the unfair lists. The Coopers reported that they were no longer sending to their local unions the quarterly pamphlet containing the list of unfair firms, because the pamphlet was submitted to the legal department of the American Federation of Labor for consideration and that department advised that its issue would constitute a violation of the injunction issued by Federal Judge Gould.³⁶ This did not, however, mean the cessation of all public notices of boycott, for in February, 1910, the journal of the Metal Polishers, which after the Buck's Stove Company in-

³³ American Federationist, January, 1902, p. 35.

³⁴ The Journal, October, 1901.

³⁵ Chapter i.

³⁶ Coopers' International Journal, May, 1908, p. 296.

junction had stopped printing the unfair list, substituted a list of firms under the following caption: "Where our members have been or are now on strike and no adjustments have been made." The list contained the names of eight firms, one of which was the Buck's Stove and Range Company. Furthermore, in 1912 the executive board of that same union agreed unanimously to place a certain firm on the unfair list despite the fact that the union professed to have no such list.⁸⁷ Some unions have definitely replaced the unfair list with other devices. The Baltimore local branch of the International Typographical Union, for example, when it had a difficulty with the Peters Publishing Company, did not place the firm upon an unfair list but sent to many of the firms in the city a booklet containing an account of their grievances and the correspondence between the union and the Peters Company, and, in addition, a pamphlet which described the benefits and advantages of membership in the Typographical Union and the aims and objects of the union. No request was made that the recipients of these letters should withdraw their patronage from the Peters Company, but the booklet closed with the challenge that "the Typographical Union is conscious of its rights, its character, and its responsibility, and it will defend them at any cost."

The unfair list is the general notice of the boycott; it must be followed by activities designed to concentrate the boycott in certain localities where the commodities in question are sold and by those designed to enlist the support of the customers of the unfair firm. The agencies which exist for the exercise of these functions are the district organizers of the American Federation of Labor, the special agents of national unions, the boycott committees of the central labor bodies, and the boycott committees of the local unions. There were at the last report 1760 district organizers of the American Federation of Labor; although they report from time to time that they are pushing certain boycotts,

⁸⁷ The Journal, April, 1912, p. 25.

these organizers are of no great importance as boycotting agencies, since their activities in furthering boycotts are merely subsidiary to their principal activities as organizers.³⁸

The special agent appointed by the national union is a functionary of considerably greater importance. In those cases where the boycotted firm is a large wholesale house which sells the bulk of its product to large retail dealers, it is the duty of these national agents to visit the various retail houses and to persuade their proprietors either to withdraw their patronage from the boycotted firm or to use their influence in persuading that firm to yield to the demands of the union. They have been appointed frequently in such unions as the Garment Workers and the Hatters. It was, for example, reported in 1902 that an agent appointed by the United Hatters' Union was in Buffalo, where he was visiting the retail hat stores and department stores in the endeavor to persuade them to stop buying Roelofs' hats.³⁹ In that same boycott four agents were stationed in Tennessee, California, Wisconsin, and Minnesota for the purpose of bringing pressure to bear upon customers of the Roelofs' Company located in those States.⁴⁰

These national agents can, however, at most stay in a town only a short while. Their duty consists rather in travelling from place to place and in organizing the boycott than in remaining at one place and managing all of its details. The hand to hand distribution of propagandist litera-

³⁸ Reports of these organizers are published in the *American Federationist*; see, for example, August, 1896, p. 130; March, 1898, p. 7; September, 1901, p. 382.

³⁹ *Journal of the United Hatters*, March, 1902, p. 12.

⁴⁰ *Ibid.*, February, 1902, p. 3. In a boycott instituted in 1898 by the United Garment Workers, in conjunction with the two local unions in whose jurisdiction the boycotted firm was situated, "sent an agent on the road to act against the unfair houses" (*Proceedings of the Sixth Convention, in the Garment Worker*, January, 1898, p. 5). In the following year the general secretary of the union recommended that a competent lecturer be kept upon the road "for the purpose of creating a greater interest in the label and of prosecuting all pending boycotts" (*The Garment Worker*, August, 1899, p. 8). See also *Proceedings of the Eleventh Regular Session of the General Assembly of the Knights of Labor*, 1887, p. 1282.

ture, the interviewing of many small local dealers, and the adoption of numerous schemes of advertisement to center attention upon the boycotted firm or commodity must be entrusted to other persons. The exercise of these extremely important functions lies in the hands of committees from the local unions⁴¹ and from the central labor bodies. Of the two, the committee of the central labor body is by far the more effective. A compact body composed of practically all of the organized laborers of the city, skilled and unskilled, the central labor body represents the only unit of consumers that can effectively carry on in a community a boycott on unfair articles. Obviously, the arguments of a committee of the Baltimore Federation of Labor, representing thousands of organized carpenters, sheet metal workers, printers, bookbinders, garment workers and others, would carry much more weight with a local merchant than would those of a committee representing the 800 to 1000 members of the local bricklayers union, or even the committee representing the United Brotherhood of Carpenters and Joiners, an organization extending all over the country with a membership of over 200,000. With regard, then, to the actual marshalling of the forces of organized labor in each community and to the impressing upon the agents of the unfair commodities in those places the strength of organized labor as a body of consumers, the boycott committee of the central labor organization is the most effective of the four agencies,—so effective, indeed, that one student of the history and functions of central labor unions has been led to assert that “without the Central Labor Union an effective boycott could not be carried on in the city.”⁴²

⁴¹ The committee on the boycott of the Knights of Labor reported in 1885 that “each state, district, and local assembly attached to the general assembly be required to appoint a boycotting committee,” which should “prepare all documents, collect evidence, and take charge of all matters pertaining to boycotting in their respective localities” (Proceedings, 1885, p. 162). See also *Journal of the Knights of Labor*, June 2, 1892, p. 4; *Journal of the United Hatters*, August, 1898, p. 3.

⁴² W. M. Burke, “History and Functions of Central Labor Unions,” in *Columbia Studies in History, Economics and Public Law*, vol. xii, no. 1, p. 83.

A prerequisite to the successful prosecution of a boycott by the various boycotting agencies is a knowledge of the destination and places of sale of the boycotted commodities and the ability to identify those articles. Labor organizations have always exhibited great activity in collecting and distributing such information. For example, when the Knights of Labor boycotted in 1888 the Higgins Carpet Company, the journal of the Order contained every week lists of shipments that had been made by that firm within specified dates.⁴³ In a boycott against a New York shoe company it was stated that the central office had a list of the retail dealers throughout the states of New York, Pennsylvania, Iowa, Ohio, Illinois, Kansas, and Michigan to whom the goods of this firm were being shipped.⁴⁴ In the boycott against the Anheuser-Busch and W. J. Lemp Companies the local and district assemblies were requested to make lists of saloon-keepers and others who sold the beer of these unfair breweries and to forward these lists for the use of the central office.⁴⁵

The methods used in the actual tracing of the goods are various, but in the main consist in following shipments or consignments to stations or piers and there attempting to discover their destinations. In a boycott in 1908 by the local carpenters' union of Dubuque, Iowa, the boycotted firm requested an injunction to restrain members of the union from "following their wagons to depots and jobs to see where they were sending material."⁴⁶ In a boycott by the Granite Cutters' Union the union reported that the "firm was afraid to ship the stone in open cars, but put it in box cars to keep the members of the union from know-

⁴³ The lists appeared in the following form: "6 large loads to Arthur and Steeman, Penna. R. R., 3 P. M. foot of Liberty St., New York to Philadelphia., Pa. . . . The truck of H. B. Clafin & Co. was hauling carpets from Dunham, Buckley & Co. (sent to D. B. & Co., from Higgins) to Star Union line, marked 'B. & B.' Columbus, Ohio" (*Journal of United Labor*, February 11, 1888, p. 2573; February 25, 1888, p. 2583).

⁴⁴ *Ibid.*, April 28, 1888, p. 2618.

⁴⁵ *Journal of the Knights of Labor*, September 3, 1891, p. 4.

⁴⁶ *Proceedings of the Fifteenth Biennial Convention of the United Brotherhood of Carpenters and Joiners*, 1908, p. 45.

ing what was being shipped."⁴⁷ In the boycott in 1891 against Rochester clothing manufacturers the Baltimore Clothing Cutters' assemblies announced that "their pickets had succeeded in tracing several carloads of boycotted Rochester clothing and that steps were taken to let the workmen of Baltimore know in what stores the boycotted goods were on sale."⁴⁸

A union may frequently be unable to trace boycotted goods to their destination or even to distinguish fair from unfair goods. One of the great difficulties experienced by the stone cutters in enforcing their boycott on unfair stone was due to their inability to determine the destination, in some cases, and the source, in others, of the stone. A union attempting to enforce a forward boycott would very often be cutting on three or four jobs at the same time, and would, consequently, be at loss to know which of the stone was to be shipped to the unfair job. If, on the other hand, the boycott were a backward boycott, the difficulty would consist in discovering the source of the stone.⁴⁹ The desire on the part of manufacturers to evade the consequences of boycotts has led to the adoption of a number of devices for concealing the identity of the goods. An obvious device is the changing of the name of the firm and the trade-mark on the boycotted commodity. For instance, when the Bricklayers placed the P. B. Broughton Brick Company on its unfair list, that firm proceeded to ship bricks under the name of the "New York Hydraulic Brick Company."⁵⁰ Indeed, an instance is cited of a boycotted corporation appealing to the state legislature that it be permitted to change its name.⁵¹ The Kimball Piano Company of Chicago, after

⁴⁷ Granite Cutters' Journal, November, 1901, p. 8.

⁴⁸ Journal of the Knights of Labor, December 17, 1891, p. 4.

⁴⁹ Stone Cutters' Journal, August, 1900, p. 4. An organizer of the Granite Cutters' Union who was stationed at Barre, Vermont, watched the stone as it left the quarries and was thus able to enforce a forward boycott by preventing its sale to non-union firms (Granite Cutters' Journal, September, 1902, p. 6).

⁵⁰ The Bricklayer and Mason, September, 1906, p. 119.

⁵¹ Proceedings of the Twelfth Regular Session of the General Assembly of the Knights of Labor, 1888, p. 95.

the imposition of a boycott, it is said, ceased to stamp its pianos as before, and sold them under seven different names.⁵³

Another device, which is far more subtle and in many cases more successful, consists in mixing fair and unfair goods, either with the connivance of a fair dealer or by the introduction of an intermediate purchaser between the manufacturer and the retailer. The first situation is well illustrated in the fur and felt hat industry. It was stated in 1899 that the "practice had for some time prevailed for certain firms, which ran union factories and made stiff hats exclusively, to buy soft hats from non-union concerns and to sell them side-by-side with the products of their own firms."⁵⁴ The Garment Workers in 1910 deplored the fact that a fair overall manufacturing company purchased ready-made non-union suspenders, attached them to the article bearing the union label and sold the completed commodity under the protection of the union label.⁵⁵ The possibility of the sale of boycotted commodities is again seen in the experience of the same unions with jobbing houses, which act as intermediaries between wholesale and retail firms. In 1900 the Hatters complained that a market for non-union hats was obtained through jobbers who sell the products of both non-union and union firms under the protection of the latter.⁵⁶ A similar complaint was registered by the Garment Workers in 1906.⁵⁷ The employment of an analogous mode of concealment is made possible in the building industry through the introduction of the building supplies' companies. One of the salesmen of the Morgan

⁵³ The Carpenter, November, 1907, p. 29.

⁵⁴ Journal of the United Hatters, April, 1899, p. 6.

⁵⁵ Proceedings, 1910, p. 116.

⁵⁶ Journal of the United Hatters, May, 1900, p. 1. President Tobin of the Boot and Shoe Workers' Union objected to placing a boycott upon a shoe manufacturing firm "because it is almost impossible to reach" a firm "that makes shoes for the jobbing trade" (Lord, p. 25).

⁵⁷ "There are a number of overall manufacturers, users of the union label, who buy these non-union garments and sell them in conjunction with the garments bearing the label of the United Garment Workers of America" (Proceedings, 1906, p. 143).

Company, whose trim had been boycotted by the United Brotherhood of Carpenters and Joiners, testified that the only way in which his company could dispose of its product on the Island of Manhattan was by concealing the origin of the goods, "by indirect methods such as the sale and disposition of these through dealers and other third parties, who could in turn dispose of such merchandise to building contractors for use in the erection of buildings without the United Brotherhood being able to detect what company manufactured the goods."⁸⁷

The possibilities for such evasions are, of course, greatly lessened in the case of simple articles where practically all of the fair goods are marked by a union label. It would, for instance, be useless for a baker in certain union communities to attempt to conceal the place of manufacture of his bread by any subterfuge whatever, because the consumers could always demand and purchase bread that bore the union label. With a composite article, however, which should bear several labels, the opportunities for evading the boycott are, as seen before, very much greater.

The foregoing discussion has been limited to a description of the methods of initiation of boycotts, of the various boycotting agencies, and of the means employed in tracing and identifying boycotted commodities. The next subject naturally deals with the methods employed in announcing directly to individual purchasers the location of the boycotted commodity or establishment. These methods vary from the distribution of circulars to public parades and processions. When, for example, the carpenters of Baltimore boycotted several department stores of that city, the members of the union and their friends distributed, in house doors and in the market baskets of women, circulars stating their grievances, announcing the boycott, and requesting the support of the public. The same thing was done by

⁸⁷ Paine Lumber Co. vs. United Brotherhood of Carpenters and Joiners, Subpoena, Notice of Motion for Preliminary Injunction, Bill of Complaint, and Affidavits, p. 190.

the Garment Workers in New York in 1905, when they circulated posters bearing the following inscription: "Marks Arnheim, 9th Street and Broadway, locked out his men for belonging to a labor organization. Don't patronize him."⁸⁸ The Metal Polishers posted stickers bearing the notice of the boycott over the doors of the boycotted firm and on other places in the street.⁸⁹ One of the agents of the United Hatters, in his prosecution of the boycott against the Roelof Company, made it a point to bill a town with placards announcing the boycott before he visited the merchants of the town; this he did on the theory that this preliminary advertisement of the boycott would make the merchants more responsive to his arguments when he should subsequently visit them.⁹⁰ Finally, in the boycott on a San Francisco restaurant a man bearing upon his shoulders signs advertising the boycott, was engaged to walk slowly up and down in front of the restaurant.

The effectiveness of the boycott, however, must depend in great measure upon the ability of a labor organization to force the observance of the boycott upon its members. Yet, as was indicated at the beginning of this chapter, such enforcement is, from the very nature of the device, difficult. In such a boycott as the carpenters' boycott on trim, where those engaged in prosecuting it are assembled within a building, it is easy to detect and punish an infraction. In the majority of instances the reverse is true. This fact has not, however, prevented unions from adopting rules which seek to insure the personal enforcement of the boycott. At the convention of the Knights of Labor in 1883 the general executive board announced that "during the period of boycotting regularly undertaken by a local assembly or district assembly, such local or district assembly may fix and enforce such penalty as they may deem just

⁸⁸ Weekly Bulletin [Garment Workers], March 10, 1905, p. 1.

⁸⁹ The Journal, December, 1901, p. 23.

⁹⁰ Journal of the United Hatters, August, 1902, p. 4.

for non-compliance with the boycotting order."⁸¹ At the convention of the American Federation of Labor in 1889 the committee on boycotts and labels recommended that "affiliated unions adopt some plan whereby members who persist in purchasing the products of non-union labor can be properly disciplined."⁸² The Typographical Union, too, in its constitution of 1889 provided that subordinate unions should "pass by-laws, enforcing with fines, suspensions, or expulsions, the willful violation of boycotts adopted either by them or by the International Typographical Union."⁸³ Local unions of printers may discipline their members even for the violation of the boycotts of other trades which they have endorsed.⁸⁴

Many local unions throughout the United States have at one time or another adopted systems of fines to be imposed upon members convicted of purchasing boycotted goods. The rules have been in the main temporary, applying only to individual boycotts; and the fines have ranged from fifty cents to ten dollars. In the boycott against the Los Angeles Times practically every union in San Francisco levied a fine of five or ten dollars on members who patronized the Owl Drug Company, one of the advertisers in the paper.⁸⁵ When, however, a boycott is being constantly waged, a union may have permanent provisions. Thus, the by-laws for the District of New York of the United Brotherhood of Carpenters and Joiners contain the provision that any member found guilty of installing unfair trim shall be fined ten dollars for each offense.⁸⁶ Even when there is no such

⁸¹ Proceedings, 1883, p. 454. At the convention in 1885 the committee on boycotts recommended also that the executive board be empowered to compel "every local and all of its members . . . to adhere strictly to each boycott . . . under penalty of forfeiture of their charter or expulsion from the Order" (Proceedings, 1885, p. 162; see also Proceedings, 1886, p. 219).

⁸² Proceedings, 1889, p. 42.

⁸³ Typographical Journal, July 15, 1889, p. 4.

⁸⁴ Barnett, *The Printers*, p. 270 note.

⁸⁵ Retail Clerks' International Advocate, June, 1903, p. 19.

⁸⁶ The Carpenter, June, 1910, p. 31.

constant boycott, a union may adopt permanent provisions to insure the purchase of fair goods. This is illustrated in the adoption by the Bethel local union of the Hatters of a standing rule that imposed a fine of two dollars on any member who patronized a non-union barber shop or who purchased an article without the union label, when it was possible to obtain such article with the label.⁶⁷ The disciplining of the members is not always effected through the medium of a fine. In Fresno, California, it was decided to punish the culprits by turning the light of publicity upon their acts. The Fresno Labor News, accordingly, published the names of those trade unionists, who were "caught in the act of purchasing non-union made goods."⁶⁸

The practical objection to such rules lies, of course, in the difficulty of enforcing them; it is almost impossible to discover who buys fair and who buys unfair goods. And little effort has been expended by the majority of unions in framing legislation to meet that difficulty. The Garment Workers, however, have adopted a most elaborate plan by which they may detect and presumably reprimand those members who buy goods which do not bear the union label. The constitution of the union provides that, after the reading of the minutes at the meeting of each of its local branches, the secretary shall at the first meeting request all members whose clothing bears the union label and who insist that union clerks wait on them to rise. At the second meeting those members who purchase only union-made cigars, tobacco, and so on, are told to rise. This performance is repeated with different commodities until the sixth night, when the same request is addressed to those who buy union-mined coal. At the next meeting the secretary begins

⁶⁷ Journal of the United Hatters, August, 1898, p. 1. Many instances of the imposition of fines on members for failing to observe specific boycotts can be found in the journals of labor unions. See, for example, Journal of the Knights of Labor, April 23, 1891, p. 3; Coopers' International Journal, April, 1903, p. 159; The International Bookbinder, December, 1902, p. 215; American Federationist, January, 1902, p. 43.

⁶⁸ The International Bookbinder, January, 1912, p. 31.

again with the first question, and the process is thus constantly repeated."⁶⁹

The boycott is under ordinary conditions an inexpensive weapon; unlike the strike, it does not postulate the unemployment of a large number of workingmen, many of whom must be paid strike benefits. As soon as a boycott is declared, those who are out of work because of a lockout or strike are usually at liberty to seek work elsewhere; negotiations with the firms for the purpose of retaining the positions of the strikers cease until the power of the union to boycott has been tested. Furthermore, the actual cost of administration is usually small. At most, a boycott involves the cost of circulars, stationery, and postage, and the salaries and travelling expenses of a few national agents. Because of its inexpensiveness few references can be found to the means adopted by labor unions to finance the boycott. An occasional practice in the early days of the boycott seems to have consisted in levying a portion of the expense upon boycotted employers. This device could, of course, be used only when a boycott was successful. For example, in the boycott on the Rochester clothing manufacturers in 1891 it was reported that many of the employers were "willing to pay a big indemnity to the National Assembly for every expenditure it has made in fighting them."⁷⁰ A boycott by the machinists in 1897 resulted in the payment by the boycotted firms of a "portion of the boycott expenses."⁷¹

Such methods did not receive the sanction of labor or-

⁶⁹ Constitution, 1912, art. xiii, sec. 13. The Milwaukee local union of the Coopers provides for the detection of violations of boycotts through the shop monitor. "If a monitor of a shop is informed that any member in his shop buys non-union goods . . . he reports it to the union and the member is fined \$1.00. If the monitor fails to report him then the monitor himself is fined \$2.00" (Coopers' International Journal, June, 1910, p. 325).

⁷⁰ Journal of the Knights of Labor, July 30, 1891, p. 4; Weekly Bulletin [Garment Workers], September 15, 1905, p. 5.

⁷¹ The International Wood Worker, February, 1897, p. 234. In the boycott on Doelger beer in 1885 the New York Central Labor Union imposed as a condition to recalling the boycott that Doelger pay \$1000, the cost of the struggle (Schlüter, p. 116).

ganizations generally. The more common way of financing the boycott is either by the levying of special assessments upon the members of the union or by the appropriation of fixed sums from the general treasury of the union. When in 1900 the Hatters' Union boycotted the Berg Company, a two per cent. assessment was levied upon all districts; with the proceeds of the assessment six agents were put on the road to press the boycott.⁷² The Metal Polishers, on the other hand, adopted the general provision that fifty dollars should be used monthly in issuing boycott literature.⁷³ In boycotts on materials, where the workmen involved are as a rule forced to strike, the expenses are greater, since strike benefits must be paid. Here, as in the payment of all other strike benefits, a definite mechanism is established for meeting those expenses. The Carpenters have the provision that "in strikes against unfair trim, benefits shall be paid out of the Unfair Trim and Label funds, after being sanctioned by the Unfair Trim and Label Secretary and the General President."⁷⁴

In the last decade the litigation in which the use of the boycott has involved American labor unions has been instrumental in adding to their financial burdens. The boycott can no longer be regarded as one of the most inexpensive of resources. In 1909 the American Federation of Labor spent for attorneys and stenographic reports the sum of \$14,000.⁷⁵ The United Hatters were reported in 1910 as having expended \$100,000 in the Danbury Hatters' case.⁷⁶ The details of the financial burden imposed upon the United Hatters of North America, a union with a membership of less than ten thousand, by the verdict granting damages against the union of more than \$250,000 are still fresh in everyone's mind. The legal complications attending the boycott upon the Buck's Stove and Range Company drew

⁷² Journal of the United Hatters, February 1, 1900.

⁷³ The Journal, February, 1902, p. 53.

⁷⁴ The Carpenter, August, 1904, p. 4.

⁷⁵ Proceedings, 1909, p. 94.

⁷⁶ Proceedings of the Thirtieth Annual Convention of the American Federation of Labor, 1910, p. 117.

from the executive council of the American Federation of Labor the complaint that it was the purpose of their opponents to entangle them in "interminable litigation," with a view to compelling "large expenditures in defense."⁷⁷ At the convention of the same year the president and the executive council were authorized to issue a "special assessment of one cent per capita" and to make such further assessments as should be found necessary for the legal defense of the Federation.⁷⁸

In imposing the boycott, labor organizations are frequently influenced by general considerations as to time and place and by facts relating to the character of the commodity and of the firm which they are about to boycott.⁷⁹ For example, when in 1887 a boycott upon the product of several New Jersey glass manufacturers was contemplated, it was reported that orders could be taken away from the unfair firms, but that "at that time it would be very difficult to find a place to put them, as about all the manufacturers have all the orders they can fill this season. Any further effort in this direction at this time would drive a large amount of trade to foreign countries." The boycott was, therefore, postponed until the following year.⁸⁰ A boycott against the manufactures of sole leather in Pennsylvania was

⁷⁷ *The Buck's Stove and Range Co. vs. The American Federation of Labor, et al. Copies of Pleadings, Preliminary Injunction Order, Opinion of Judge Gould, and Testimony on Hearing for Permanent Injunction*, p. 363.

⁷⁸ *Ibid.*, p. 372.

⁷⁹ Von Waltershausen lays down the following conditions necessary to the success of a boycott: (1) it must not be waged against monopolies; (2) it must be waged against a few opponents; (3) the number of unionists must be large and under a central unifying authority; (4) it should be waged against a firm that sells to a local market; (5) articles of luxury should not be boycotted, and (6) it should not be imposed upon goods difficult of identification ("Boycotten, ein neues Kampfmittel der amerikanischen Werkvereine," p. 14).

⁸⁰ *Proceedings of the Eleventh Regular Session of the General Assembly of the Knights of Labor, 1887*, p. 1336.

found to be inadvisable because "three-fourths of the firm's product are exported."⁸¹ Similar difficulties in enforcing boycotts upon commodities whose identity could be easily concealed and upon goods which were sold to consumers hostile to the labor movement have been pointed out in this and an earlier chapter. Attention has not, however, been called to the effect upon a boycott of the presence or absence of a substitute for the commodity in question.

Trade unions have generally recognized the fact that boycotts cannot be imposed upon commodities for which there is no adequate substitute. At a time when the carpenters' union was able to enforce its boycott upon all unfair trim that was destined for the New York market, it was unable to boycott the so-called sash (13½") because the amount of that "material manufactured by union concerns is very small and insufficient to supply the demand."⁸² The Brewery Workmen's Union was often handicapped in its boycotts of unfair breweries by the lack of a substitute for the boycotted beer. It was recommended in 1886 that cooperative breweries be organized with a view to supplying a union product during a boycott.⁸³ The Metal Polishers recommended the unionizing of "at least one firm that manufactures builders' hardware," so that the members of the building-trades unions might be able to impose and enforce boycotts upon non-union hardware and still have material to work upon.⁸⁴

The presence of a substitute may, however, under certain circumstances bring disaster to the boycotting union. Such a situation is illustrated in the experience of the Stone Cutters. The refusal of these workmen to set stone cut by planers is said to have led to the substitution for stone of such building materials as concrete and terra cotta, in the

⁸¹ Report of the General Executive Board at the Twelfth Regular Session of the General Assembly of the Knights of Labor, 1888, p. 124.

⁸² *Paine Lumber Co. v. United Brotherhood of Carpenters and Joiners*, Subpoena, Notice of Motion for Preliminary Injunction, Bill of Complaint, and Affidavits, p. 186.

⁸³ Schlüter, p. 130.

⁸⁴ *The Journal*, November, 1899, p. 355.

working of which stone cutters have no part. The existence of this substitute, obviously, far from aiding the stone cutters in their boycott, results in a contraction of the field of stone cutters' work. The original proposition as regards the necessity for a substitute should, then, be modified by noting that the boycott is likely to be successful if the substitute for the boycotted commodity or material is manufactured by organized members of that trade which seeks to control work in the unfair establishment.

Where an industry is monopolized or where the product of the industry is protected by a patent, no substitute can be usually obtained and a boycott is unavailing. In 1904, for instance, the Coopers boycotted Swift and Company, the Chicago packers. The boycott was ineffective, "not because it was unjustly placed, but simply because people are obliged to have meat and cannot boycott the only source of supply."⁸⁵ The same difficulties would prevent the successful boycotting of such firms as the Standard Oil Company or the American Tobacco Company. In industries in which no actual monopoly exists the effects of monopoly may be produced, as far as the boycott is concerned, by the formation of an employers' association. A boycott, for example, of a Chicago clothing firm by the Garment Workers develops ordinarily, because of the influence of a closely knit employers' association in the clothing trades, into a boycott upon the products of all manufacturers.⁸⁶ The boycott is, therefore, materially weakened by the fact that the union cannot here, as it can where an employers' association does not exist, boycott the product of one firm and recommend in its place the product of another; but it must enforce a general boycott without being able to offer the retailer a suitable substitute. As soon, of course, as such associations assume an interstate or a national character, a boycott upon the product of a member of the association becomes for this reason almost impossible.

⁸⁵ Coopers' International Journal, July, 1904, p. 399.

⁸⁶ Proceedings, 1906, p. 29.

The foregoing discussion of the rules and regulations adopted by American labor organizations with a view to rendering the boycott more effective places perhaps too much emphasis upon the effect in labor disputes of the actual waging of the boycott. As a matter of fact, the effectiveness of the boycott consists in its potential rather than in its actual accomplishments. The threat is often more effective than the fact. Just as "the strike which is held in reserve to be resorted to only in case of need, is the chief reliance of organized labor, and a part of the pay that men get when they never strike at all is due to their ultimate power to do this,"⁸⁷ so the impending boycott, held as a mailed hand over the head of a recalcitrant employer, wrests from him important concessions. In other words, a true measure of the influence of the boycott is not to be found in a count of specific instances of failure and success; but rather in the silent, but no less important, surrender to the unions of those employers who, fearing the force inherent in the combined purchasing power of hundreds of thousands of laborers, are unwilling to expose their businesses to the dangers of a boycott.

⁸⁷ J. B. Clark, *The Problem of Monopoly*, p. 62.

CHAPTER VI

THE LAW AND THE BOYCOTT

The legal status of the boycott in this country has received full and competent treatment from Stimson,¹ Martin,² Clark,³ and Laidler.⁴ The conclusions of these writers substantiate the view commonly held that boycotts, with the exception of certain forms of primary boycott, have been in most cases adjudged illegal by federal and state courts as constituting violations of the common law and of special federal and state statutes. The establishment of the illegality of the boycott, however, still leaves unanswered a question of fundamental importance. How far have the legal restrictions which have been imposed upon the boycott prevented trade unions from employing that weapon as a means of industrial pressure? Obviously, if the boycott be a device of such a character as to be beyond the arm of the law, adverse judicial decisions and plans for legalizing the boycott become matters of purely academic interest and of secondary importance. If, on the other hand, such decisions have had the effect of seriously hindering the activities of labor organizations, in so far as they find it necessary to supplement their ordinary resources with the boycott, then the principles underlying judicial dicta and the plans for either removing or extending, as public policy may dictate, the legal disability of the boycott, should become the subject of grave consideration. It is now necessary to determine, therefore, the extent to which the various means employed by the courts in their efforts to control the boycott have from time to time proved effective.

¹ Handbook to the Labor Law of the United States.

² The Modern Law of Labor Unions.

³ The Law of the Employment of Labor.

⁴ Boycotts and the Labor Struggle. This work contains the latest and most complete discussion of the legality of the boycott.

From 1880 to 1902 boycotts were employed with increasing frequency in spite of their illegality. The injunction, even when accompanied by criminal or civil action against the agents of labor unions, was totally inadequate to cope with the situation. When an injunction was issued in one city against a firm which conducted an interstate business, the boycott would be prosecuted with redoubled vigor in neighboring localities; when one member of a boycotting committee was enjoined from further advertising the fact of boycott, his place was promptly taken by another; and, finally, when one union was restrained from officially instituting a boycott against an unfair firm, the same results could be produced by having the boycott initiated by another union. Thus, in the boycott in 1898 against the New York Sun the president and several members of the local typographical union of New York were enjoined from boycotting the New York Sun or its advertisers. In order to evade the provisions of this injunction, the resolutions boycotting that paper were introduced at the convention of the American Federation of Labor by the Detroit Trades Council and not by the Typographical Union.⁵ The best concrete evidence of the ineffectiveness of the injunction is to be found in the activity during this period of the Knights of Labor and later of the American Federation of Labor and its constituent unions. Unfair lists were published with regularity; plans for conducting campaigns against boycotted firms were discussed with a naive disregard of the law; resolutions to boycott were endorsed in journals and convention proceedings with a degree of publicity that actually courted legal interference. Not that the injunction had no influence; for in 1902 the complaint was made that "the injunction in labor disputes is becoming more and more general; its value to the employer and its danger to the workmen are becoming better and better understood."⁶ But the cumulative effect of the injunction

⁵ Proceedings, 1899, p. 83.

⁶ Proceedings of the Twenty-second Annual Convention of the American Federation of Labor, 1902, p. 144.

upon the employment of the boycott was to impose upon trade unions a series of temporary embarrassments or annoyances rather than a permanent disability.

The organization in 1902 of the American Anti-Boycott Association marks the turning-point in the legal position of the boycott; from that time on it began to lose its immunity. In the suit of Mr. Loewe against the United Hatters' Union, one of the first cases to be tried under the auspices of the American Anti-Boycott Association, it was the desire of that organization to obtain rulings on two important points: (1) "Whether the members of a voluntary unincorporated association are, on the principle of the law of agency, personally responsible for the acts of its officers and agents." (2) "Whether the extension of a boycott by a labor union beyond the borders of a state is a conspiracy in restraint of trade, and, therefore, an illegal act under the Sherman Anti-Trust Act." The affirmative answer to both questions was destined soon to exert a profound influence.

(1) It was apparently the opinion of the counsel of the American Anti-Boycott Association that the only effective method of eradicating the boycott consisted in the placing of full legal responsibility, in the shape of damages, upon every member of the union that initiated the boycott. Instead of restricting the punishment for the violation of an injunction to fines or damages imposed upon the officers or agents, the more effective plan was hit upon of involving in the action every member of the union. Accordingly, it was reported in the Hatters' Journal in 1903 that "nearly one hundred and fifty Danbury and Bethel men, members of the local branches of the United Hatters of North America, are named in the suits [Loewe v. Lawlor] and their real estate and bank accounts attached."⁷ The effect of this ac-

⁷ Hilbert, p. 214.

⁸ Journal of the United Hatters, October, 1903, p. 1; see also Laidler, p. 156. This case was finally disposed of on January 5, 1915, when the United States Supreme Court affirmed the judgment of the lower courts which had awarded the plaintiff (Loewe & Co.) treble damages against one hundred and fifty members of the Danbury and Bethel local unions of hatters. The agreement

tion was instantaneous. The Hatters' Union, which had for a long time been an aggressive boycotting organization, thereafter practically abandoned that weapon. Nor is the cause for this sudden reversal in policy difficult to comprehend. The knowledge instilled by this decision into each individual that membership in a boycotting union constantly exposes him and his property to action for damages has without doubt induced in trade unionists an extreme conservatism, and even timidity, that would effectually restrain them from becoming parties to the future use of the boycott.

Now that this device has been found so successful in the Danbury case, it is probably the intention of the American Anti-Boycott Association to bring similar actions for damages against the members of other unions. The association has, for example, for several years been conducting the legal fight of the manufacturers of boycotted trim against the United Brotherhood of Carpenters and Joiners. Although the courts have issued injunctions against the Carpenters' Union, these have not been very effective on account of their inability to enjoin workmen for refusing to work upon certain material.⁹ Indeed, by the time the injunction was issued the boycott notices had been so widely and so thoroughly disseminated that no further advertisement was necessary. Consequently, the only part of the boycott that was capable of being enjoined was ordinarily completed before an injunction could be obtained.¹⁰ Injunctions have, however, served the purpose of obtaining from the courts the judgment that the boycott is illegal and of establishing

made, however, between the local unions and the national organization, whereby the fine is to be borne by the latter, relieves the individual members of the greater part of the financial burden.

⁹ "The courts cannot compel men to work, and they can leave for any reason they see fit, or without reason; and if it be that the carpenters in this case desired to comply with the rules and regulations of their brotherhood there is no law that can prevent them or could prevent Rice from informing them that the trim was non-union material" (*Bossert v. United Brotherhood of Carpenters and Joiners*, 77 Misc. 592, quoted in the New York Department of Labor Bulletin, vol. xiv, no. 53, p. 412).

¹⁰ Furthermore, practically the whole New York market was unionized before the American Anti-Boycott Association began its activities.

the fact that the companies involved have suffered irreparable damages at the hands of the unions imposing the boycotts. The next step, therefore, is the inauguration by the injured firms of suits to recover damages for the losses sustained during the operation of the boycott.

(2) On February 3, 1908, the United States Supreme Court rendered a unanimous decision in the *Danbury Hatters' Case*, holding "that the Sherman Anti-Trust Law applies to combinations of labor that accomplish through the medium of a boycott an interference with interstate commerce, and sustaining the right of a complainant suffering from such interference to recover damages to the extent of three times the amount of injury substantiated and awarded."¹¹ This decision was important for two reasons. In the first place, it permitted firms doing an interstate business which were previously compelled to take action against trade unions in each State where the boycott was in force to proceed against such organizations in a much simpler and more direct fashion. Discussing the necessity for the federal control of the boycott, Mr. James M. Beck, general counsel of the American Anti-Boycott Association, said: "No manufacturer, without great loss and possible ruin, could follow Mr. Gompers' emissaries from State to State and Circuit to Circuit and obtain injunctions. As in the great Pullman strike only the United States Government was effectual to stop it by its injunction against Debs, similarly only the Federal Government can effectually destroy this wide-spread conspiracy of the Federation against the freedom of commerce and the liberty of the individual."¹² In the second place, a decision of the United States Supreme Court, because of the prestige and power of that tribunal, carries an influence which the decisions of state courts lack. Not only has the judgment in the *Hatters' Case* been instrumental in crystallizing public opinion as to

¹¹ Convention Bulletin of the American Anti-Boycott Association, March, 1908, p. 12. See also note 8 above.

¹² *Ibid.*, p. 16.

illegality of the boycott, but it should also exert considerable influence in shaping future decisions of state courts.

It is erroneous, however, to assume that as a consequence of these decisions the boycott has disappeared from American industrial conflicts. A decrease in publicity has, of course, resulted, for in March, 1908, Mr. Gompers announced that under the decision of the Supreme Court "the publication of a 'We don't patronize' list in the American Federationist or any other publication makes the organization and the individuals composing it liable to monetary damages and imprisonment. This being the case, I feel obliged to discontinue the 'We Don't Patronize' list."¹³ Similar action was taken also by the editors of the journals of national unions. Yet an official of the American Federation of Labor admitted in 1913 that the boycotting activity of American trade unions was just as great at that time as during the publication of unfair lists. And Mr. Beck, commenting on the action of Mr. Gompers, stated that "we, who have pushed this fight for so many years, are gratified that Mr. Gompers has so far yielded to the authority of the law as to drop the 'unfair list' from the columns of the Federationist, but we are not deceived by this concession. We know that the boycott can be pushed secretly as well as openly, by innuendo as by direct order."¹⁴ In spite of these evidences of secret activity, there is little doubt that the average trade-union member, inspired on the one hand by a feeling of awe for the power of the federal government and on the other by the fear of personal pecuniary loss, is now much less inclined to sanction a boycotting policy in his union than he was before the promulgation of these deci-

¹³ American Federationist, March, 1908, p. 192.

¹⁴ Convention Bulletin of the American Anti-Boycott Association, March, 1908, p. 15. "The most that the Van Cleaves can hope for in prosecuting the suits against the officers of the American Federation of Labor is to check the openness with which the boycott is at present applied by the unions. They may succeed in forcing the labor unions into more secrecy in such matters, but this will not injure the cause of organized labor, for it is a well known fact among men well versed in trade unionism that the secret boycott is more effective than the open one" (Coopers' International Journal, October, 1907, p. 580).

sions.¹⁵ Furthermore, the increased activity exhibited by trade-union officials in recent years in their desire to obtain the exemption of labor organizations from the Sherman Anti-Trust Act, with the consequent legalizing of the boycott,¹⁶ is ample testimony that the campaign of the American Anti-Boycott Association has not been without its fruits.

The recognition by trade unionists that the boycott can no longer be employed with impunity has led to efforts to remove legal obstacles. It is, therefore, desirable at this point to examine the attitude of both employers and workmen toward the boycott, and to decide if possible upon the validity of their respective claims.

Probably no aspect of trade-union activity has been at the same time so vigorously denounced by its enemies and so spiritedly defended by its friends as the boycott. By the employer it is regarded as a violation of the right of "freedom of directing one's business and one's property without coercion, threat, or intimidation,"¹⁷ and by labor organizations it is justified by the "constitutional guarantee of the right of Free Press and Free Speech."¹⁸ Charac-

¹⁵ The effect of the decision of the United States Supreme Court can be seen in the following report of the general executive board of the Coopers' Union: "The Finch Distilling Company of Pittsburg having been removed from the unfair list, the Secretary-Treasurer was instructed to take up and push the fight against the Valley City Milling Company of Grand Rapids, Michigan. We were pushing this fight when the Supreme Court of the United States declared boycotting to be unlawful. Nothing has since been done in the matter" (Coopers' International Journal, September, 1908, p. 542).

¹⁶ For an interesting description of the efforts made by labor organizations to have the trade unions exempted from the provisions of the Sherman Anti-Trust Act, see "The Contest in Congress between Organized Labor and Organized Business," by Philip G. Wright, in *Quarterly Journal of Economics*, vol. xxix, p. 235.

¹⁷ Report of Secretary Boocock in the Convention Bulletin of the American Anti-Boycott Association, February, 1907.

¹⁸ "I have called attention to the fact that perhaps the most effective answer which could be interposed to injunctions issued to restrain organized labor from issuing circulars in regard to the 'boycott' is the constitutional guarantee of the right of Free Press and Free Speech" (Report of President Gompers to the Twenty-second Annual Convention of the American Federation of Labor, Proceedings, 1902, p. 19).

terized by the Anthracite Coal Strike Commission as a "word of evil omen and unhappy origin," as a "cruel weapon of aggression," whose use is "immoral and anti-social,"¹⁹ it is described by a prominent labor leader as "nothing more than leaving something or somebody alone. It is following the scriptural injunction: 'If thine eye offend thee, pluck it out and cast it from thee.'"²⁰

The employer, while admitting in many cases the right of workingmen to combine for higher wages and improved working conditions, believes that such combinations should be permitted to issue only as strikes.²¹ Even though the ultimate object of the boycott may be the "amelioration of the conditions" of labor, its immediate object, he maintains, is "the injury and ruin of the manufacturer."²² Furthermore, a "man's business is his property," and inasmuch as a boycott is "an organized effort to exclude a person from business relations with others," it constitutes an unlawful interference with a fundamental right.²³

To these arguments trade unionists answer in substance, first, that it is impossible to distinguish, in most cases of boycott, between the immediate and the remote motives impelling the union to act.²⁴ If a union boycotts John Smith,

¹⁹ Report of the Anthracite Coal Strike Commission, in *Bulletin*, U. S. Department of Labor, May, 1903, no. 46, p. 502.

²⁰ Statement of Andrew Furuseth, President of the International Seamen's Union of America, before the Senate Committee on Interstate Commerce (Hearings before the Committee on Interstate Commerce, United States Senate, 62d Cong., Pursuant to S. Res. 98, vol. ii, parts xviii-xxvii, p. 1874).

²¹ "The only pressure that may be brought to bear on the employer must be limited to that which inseparably grows out of their right to quit work and deprive him of the services of a large number of people" (W. G. Merritt, *Limitations of the Right to Strike*, p. 14).

²² Merritt, *The Neglected Side of Trade Unionism, The Boycott*, p. 6.

²³ *Ibid.*

²⁴ Mr. Gompers in discussing with Senator Cummins the Danbury Hatters' boycott said: "The motive, after all, is the thing, in most instances, and the motive attributed to us was the destruction of this man's business, the diversion of his business. As a matter of fact, the motive was to bring about contractual relations of mutual advantage and of general advantage and of social advantage" (Hearings before the Committee on Interstate Com-

an employer, it professes to have no other motive than to force him to grant its demands; the same motive operates to induce a union to strike against an employer. In one case the union seeks to prevent the employer from manufacturing his goods, and in the other, since the strike has failed, it seeks to prevent him from disposing of them. Secondly, labor unions deny that a boycott may injure a property right, since "no man has a property right in a customer or in a laborer who works for him."²⁵ On the contrary, they argue, "to withhold patronage is a right and to tell why it is withheld is also a right."²⁶ And from this point it is but a short step for them to assert that men have "a natural right to bestow collectively that which they have the right to bestow individually, and to withhold collectively that which they have the right to withhold individually."²⁷

Elements of truth can no doubt be found in the contentions of both parties to the dispute. Boycotts are sometimes imposed with the prime intention of injuring the employer in disputes where there is only a remote possibility of improving working conditions. As a general proposition, too, it must be admitted that men should be guaranteed the right to conduct their business without the fear of unwarranted coercion or intimidation. On the other hand,

merce in United States Senate, 62d Cong., Pursuant to S. Res. 98, vol. ii, parts xviii-xxvii, p. 1763). See also the discussion between Mr. Furuseth and Senator Brandegee as to the object of a union in imposing a boycott (*ibid.*, p. 1875).

²⁵ The Carpenter, February, 1909, p. 33.

²⁶ *Ibid.*, July, 1901, p. 5. "If the merits of the Buck Stove, for instance, were fraudulently extolled by the maker, the publication of that fact ought to be and would be lawful. The Buck Stove customers have a right to know the truth about this important element in determining their action as buyers. But customers are influenced by other considerations than the inherent merits of the commodity they buy. . . . They might not like to buy commodities produced by under-paid and over-worked labor. It is, therefore, no wrong to let them know this fact, in cases in which it is the fact and to appeal to them not to buy. And so of those who prefer 'union-made' goods to 'scab-made' goods; the manufacturer has no property right in secrecy as to that fact" (The Public, quoted in the Weekly Bulletin [Garment Workers], February 26, 1909, p. 8).

²⁷ Proceedings of the Nineteenth Annual Convention of the American Federation of Labor, pp. 10, 147.

it is equally obvious that in most industrial disputes labor organizations impose boycotts not with a view to injuring the employer, but to obtain from him concessions that are essential to the life and welfare of the union. Similarly, the right to combine and withhold patronage is in some cases legitimate, since even the courts, by holding the primary boycott legal, have, to a limited extent, recognized that right. The question of the morality or immorality of the boycott as an industrial weapon cannot, however, be settled by referring merely to the abstract rights of those affected by its exercise. Another important element must still be considered, namely, the function of the boycott in modern industrial life.

In an analysis in an earlier chapter²⁸ of the conditions under which the boycott emerges it was pointed out that the boycott arises—first, where organization by any other means is either impossible or unlikely because of the apathy of workmen or the hostility of employers, and, second, to supplement strikes which threaten to be unsuccessful because the employer has succeeded in replacing strikers with strike-breakers. In both cases the boycott is an indispensable resource of labor organizations. Without it organization in many trades would have been either impossible or long delayed. The history of the brewery workers' movement, for example, affords strong evidence of the service of the boycott. Opposed during the seventies and eighties by employers' associations, which seemed invincible in their opposition to labor unions, the Brewery Workmen's Union, with the aid of the Knights of Labor and of such trade organizations as the Carpenters' Union, by the effective application of the boycott laid the foundations for what was later to develop into one of the strongest labor organizations in this country. The Garment Workers, also, in early struggles with the Rochester Combine and later with employers' associations in Chicago and Philadelphia were forced by the intense opposition of employers to send agents

²⁸ Chapter ii.

on the road in order to attack the employers through their customers. With even greater effectiveness, if less extensively, the boycott, together with the other resources of the union, has been again and again employed by the Printers. In a campaign of organization which lasted perhaps less than a decade and in which the boycott played a prominent part, the Hatters' Union succeeded in organizing one hundred and sixty-six of the one hundred and seventy-eight fur hat manufacturers of the country.²⁰ The success of the United Brotherhood of Carpenters and Joiners in organizing wood mills, solely by the use of the boycott, in the face of the apathy of the workmen on the one hand and the hostility of the trim manufacturers on the other, need not be again recounted.²⁰

Nor is it correct to assume that the need for the boycott as an organizing agency has now passed. Organization has doubtless within the last ten years received an additional impetus, but there still remain whole sections of industries and individual establishments which it will be impossible to organize without the employment by the laborers of their combined purchasing power. A case in point is the shirt, collar, and cuff manufacturing industry. Here the employers oppose organization; what little organization has arisen in spite of this opposition has been ineffectual because of the refusal of the employers to entertain commitments from the organized sections.²¹ Moreover, because of the lack of adequate defense funds and because of the ease with which strikers may be replaced, a strike is out of the question. Accordingly, a refusal to buy and a request to the friends of labor that they too shall refuse to buy are forced upon the union by the exigencies of the situation. The same state of affairs obtains, perhaps to a lesser degree, in other industries. Such unions as the Bakers and

²⁰ Statement of Daniel Davenport, general counsel for the American Anti-Boycott Association to the Committee on Interstate Commerce, United States Senate, 62d Cong., vol. ii, parts xviii-xxvii, p. 1995.

²⁰ See Chapter ii.

²¹ Weekly Bulletin [Garment Workers], May 13, 1910, p. 1.

Confectioners, the Metal Polishers, the Broom Makers, the Bookbinders, and others have made effective use in the past and must necessarily continue to make effective use of the boycott as a weapon of last resort. The boycott on materials, as employed by the Carpenters, presents even greater possibilities as an organizing device. Used by stronger unions with a view to helping the weaker, it promises to be of inestimable value in extending organization, particularly among unskilled laborers. Regarded, then, as a resource of trade unionism, the boycott performs an important service in fostering the growth of organizations that have for several generations developed with the sanction and support of society.

As a further attempt to establish the morality and propriety of the use of the boycott, it has been compared with another trade-union measure which for almost a century has been regarded as ethically proper and socially desirable. This measure is the strike. Between the boycott and the strike there is said to be a close analogy which has in most discussions of the boycott not been sufficiently emphasized.²² The right of one person to cease work has been recognized; the right of men to combine and cease work is also recognized. Likewise, the right of one individual to withdraw his patronage is admittedly a legal right; a combination of persons to withdraw patronage is, on the other hand, declared a conspiracy and is held to be illegal. Yet both combinations may have been formed with the end in view of obtaining concessions from the employer. Furthermore, the mechanisms of the strike and of the boycott are markedly similar. In the boycott the facts in the dispute are published and efforts are made to destroy the business of the unfair firm by diverting its patrons to competitors; in the strike the effort is again made to destroy the business of a firm, but in this case by keeping from a manufacturer the necessary labor power. The boycott committees which call on customers in the one case and the pickets who interview

²² Laidler, p. 212.

probable strike-breakers in the other perform acts which in purpose and in effect it is extremely difficult to differentiate.

This close analogy between the strike and the boycott was pointed out by one of the attorneys of the American Anti-Boycott Association. "Its [the strike's] purpose and effect," he writes, "is usually the same as the boycott or picketing, as both of these weapons are the result of efforts to isolate the manufacturer and cut off his business intercourse in such a way that he will be compelled to yield to certain demands; the strike isolates him from his employees; the boycott isolates him from customers and supplies; and both employees, patrons, and supplies are equally indispensable to the conduct of his business. The strike cannot be differentiated from the boycott on principle unless it be on the plea that it is merely the exercise by men in combination of their right at any time to terminate the relation of employer and employee. If limited to such a purpose its objectionability in a measure disappears, but at the best it is a right of a most anomalous nature."³³ The purpose and effect of the boycott being the same as those of a strike, it is difficult for laborers and their sympathizers to see why men should not be permitted to combine to terminate the relation of vendor and vendee as well as that of employer and employee.³⁴

³³ Merritt, *Limitations of the Right to Strike*, p. 11.

³⁴ "Another distinction the law draws, which seems to them [trade unionists] unfair, is that between strikes and boycotts. One way in which the obdurate employer may be made to respect the right of his men to organize is by inducing his customers to withdraw their patronage unless he treats his employees in a manner that seems to these customers fair. Trade unionists see no reason why, feeling as they do, in regard to the right of wage-earners to organize, they should not refuse to patronize an employer who denies them this right. To make such refusal effective, they think that they should be allowed to publish the names of 'unfair' or 'we don't patronize' employers in their journals" (H. R. Seager, *Laws, Courts and Industrial Bitterness in the Survey*, August 2, 1913, p. 586). Laidler believes also that there will be an evolution of the law of boycotts similar to that which the last century has seen in the law of strikes. "One by one the arguments which were used against the legality of strikes—practically the same as those

The objection might here be urged that, although the primary boycott bears a close analogy to the strike, the secondary boycott is distinctly different in effect from the simple strike, since, like the sympathetic strike, it inflicts injury upon an innocent third party. For example, a strike against the Buck's Stove and Range Company affects that company alone; a boycott against the same company usually affects also its customers, who are in no wise parties to the original dispute and against whom the union has no grievance. As industry is now constituted, such a result is inevitable. A large manufacturing company rarely sells directly to the ultimate consumer. Intermediate between the consumer and the manufacturer is usually the agent. If the manufacturers' goods are to be reached by the boycott, they must be boycotted as a part of the stock of the agent. As long as the agent or retailer continues to buy the commodity in question, he suffers injury together with the manufacturer. The retailer may, however, escape the boycott by withdrawing his patronage from the unfair manufacturer. Since the boycott of the retailer is indispensable to the waging of the original boycott, this simple form of the secondary boycott need not be distinguished in principle from the primary boycott. Where, however, the union imposes a secondary or tertiary boycott which is not essential to the original boycott—as, for example, when a union boycotts one who has been a passenger upon an unfair trolley line, or one who has purchased, not in the capacity of agent, an unfair commodity—the extension of the boycott is indefensible in theory and practise.²⁵

now employed against boycotts—have been discarded. Strikes were declared to be unlawful conspiracies. They injured the property of another, they coerced others against their will, they were malicious, their immediate effect was harmful. The arguments no longer obtain. . . . That the same evolution is likely to occur in the case of the boycott seems logical" (p. 262). The same analogy is drawn by Boudin, p. 55.

²⁵ John Mitchell believes that "the further the boycott is removed from the original offender the less effective it becomes," because such a boycott is less likely to receive public sympathy (Organized Labor, p. 289).

Even the primary boycott exhibits certain characteristics that distinguish it materially from the strike. A strike is, broadly speaking, a contest between a union and an employer during which the employer seeks to replace the strikers with strike-breakers, while the union attempts to dissuade strike-breakers from taking the places of its members. Under normal conditions, if no violence is used, the contestants are on equal terms. The strike-breaker makes his decision at the seat of the disturbance subject to the influence of both the employer and the union. The ordinary boycott is different. Here the battle is waged by thousands of consumers who are not even remotely connected with the original dispute; they enter the struggle, not because they themselves have any grievance, but because wise foresight tells them that in the future they may make a similar use of the purchasing power of the union that now asks their support. Their endorsement of and active participation in the boycott are not based upon an intimate acquaintance with the facts in the original dispute and are not supported by the conviction that the boycott is just; on the contrary, they receive their information from the one-sided account furnished by the union and make no efforts either to substantiate or to refute the charges. When, for example, the United Hatters boycotted the J. B. Stetson Company, thousands of unionists in the United States participated in the boycott without making any attempt to learn the employers' side of the controversy. The same was true in the boycott upon the Buck's Stove and Range Company and in many other boycotts. Not that labor organizations had in these disputes no real grievances. In many cases their grievances are real and redress is urgent. This fundamental distinction between the strike and boycott, nevertheless, remains. In a strike the employer may obtain a fair hearing and may take measures to protect his business; in a boycott the union acts as judge, declares the employer guilty, invokes to its aid a vast power foreign to the dispute—the membership of affiliated unions—and, if the boycotted commodity

is sold for the most part to workingmen, it succeeds in destroying the employer's business. Strike-breakers often help employers to win strikes; consumers hostile to trade unions can, however, only under the most unusual circumstances be so organized as to render effective aid to a boycotted employer.⁸⁸

Another quality that distinguishes a boycott from a strike is its permanence. When a strike is declared off, the factory resumes its work as before. The publicity given the boycott, on the other hand, and the deep feelings of hostility engendered by its prosecution produce more lasting effects. A commodity once advertised as unfair retains the stigma for a long time after the boycott is raised. A retail dealer who has been persuaded by the union to withdraw his patronage from an unfair firm may, even after the boycott is removed, decide to avoid the possibility of a similar inconvenience in the future, and will give his custom to another firm. Similarly, many general consumers who have during the period of boycotting patronized other establishments will, through mere inertia, not return to the boycotted firms when the trouble is over. The establishment of new business connections while the boycott is in progress and the impression left upon the minds of the consumers by the advertisement of the unfair commodities or firms tend to impart to boycotts a permanent influence which is not characteristic of the strike.

⁸⁸ The products of C. W. Post's company are, it is alleged, consumed for the most part by the so-called middle class, which has no sympathy with trade unionism. For this reason, the losses sustained by the company as the result of vigorous boycotts launched against it by almost every American trade union have been amply compensated for by increased patronage from the opponents of labor organization. As a rule, however, most products are not so thoroughly advertised as is Postum Food, and the effects of a boycott are, consequently, not mitigated by additional custom from new quarters.

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SERIES XXXIV

No. 2

**JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE**

Under the Direction of the

**Departments of History, Political Economy, and
Political Science**

**THE POSTAL POWER OF CONGRESS
A STUDY IN CONSTITUTIONAL EXPANSION**

BY

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PREFACE

The purpose of this essay is to trace the legislative and judicial history of the grant to Congress of the power "to establish postoffices and postroads," and to discuss the constitutionality of the proposals that, under this clause, federal control may be extended to subjects over which Congress has no direct authority. The essay is thus one in constitutional expansion, and does not consider the history or efficiency of the postoffice as an administrative arm of the government. A treatment of this subject, which has as yet received scant notice, I may some day attempt.

Portions of Chapters IV and VII have appeared as articles on "Federal Interference with the Freedom of the Press," and "The Extension of Federal Control through the Regulation of the Mails," in the *Yale Law Journal* (May, 1914) and the *Harvard Law Review* (November, 1913) respectively. They have been thoroughly revised for publication in their present form. Chapter V appeared in substantially the same form in the *Virginia Law Review* (November, 1915).

I am under great obligations to Professor W. W. Willoughby, not only for much direct assistance in the preparation of this essay, but for the inspiration of his productive scholarship.

L. R.

THE POSTAL POWER OF CONGRESS

CHAPTER I

INTRODUCTORY: THE ANTECEDENTS OF THE POWER

It is, perhaps, not insignificant that *The Federalist* contains but a single reference to the power lodged in Congress "to establish postoffices and postroads." The writers of that incomparable collection of political papers which discussed in such exhaustive detail the disputed points of the proposed governmental frame-work for the United States of America, hardly needed to argue that the proposed delegation could not be deemed dangerous and was admittedly one of national concern. "The power of establishing postroads," said Madison, "must, in every view, be a harmless power, and may, perhaps, by judicious management, become productive of great public conveniency. Nothing which tends to facilitate the intercourse between the states can be deemed unworthy of the public care."¹

Half a century later, Story prefaced the discussion of this power in his *Commentaries*, with the remark that, "One cannot but feel, at the present time, an inclination to smile at the guarded caution of these expressions, and the hesitating avowal of the importance of the power. It affords, perhaps, one of the most striking proofs, how much the growth and prosperity of the country have outstripped the most sanguine anticipations of our most enlightened patriots."²

At the time Story wrote, the postal power had, of course, already achieved a "commercial, political, intellectual and

¹ *The Federalist*, No. 42.

² *Story, Commentaries on the Constitution*, vol. iii, p. 22.

private" importance, "of incalculable value to the permanent interests of the Union," vital both to the government and to individuals. But there was also the problem, lately acute, as to whether Congress had simply the power "to designate, or point out, what roads shall be mail roads, and the right of passage or way along them when so designated," or the larger power "to construct any roads which Congress may deem proper for the conveyance of the mail, and to keep them in due repair for such purpose."³ The remarkable benefits already achieved and the disputed extensions were the developments which excited Story's surprise at the unprophectic remark of *The Federalist*.

But for some time the postoffice has been a common carrier and is now supplanting the express companies; it exercises banking functions not only for facilitating exchange but for savings deposits, and other collectivist activities are most strongly urged. The Supreme Court of the United States has upheld a broad power in Congress to prevent and punish interference with the carriage of the mails, and it is thus possible to make further extensions of federal authority.⁴ The right to incorporate railways and build postroads is firmly established, and assertions are made that it is both competent and advisable for federal authority to assume control of the telephone and telegraph systems and perhaps the railways themselves. It is, finally, argued that Congress may solve problems of purely local origin, and of primary sectional concern, through the simple expedient of denying the use of the mails unless certain regulative conditions are complied with. Viewing these extensions as either definitely upheld by the Supreme Court, or seriously urged, one cannot now but smile at the "guarded caution" of Story's description and his "hesitating avowal" that postroads might, with certain restrictions, be constructed under federal auspices. The distinguished jurist, however, wrote more prophetically than he knew, when he empha-

³ Story, *Commentaries on the Constitution*, vol. iii, p. 26.

⁴ In *Re Debs*, 158 U. S. 564 (1895).

sized the importance of this power, "both theoretically and practically."

Yet it is not unnatural that at the time the Constitution was framed, the importance of the postal power should have been inadequately estimated, since, inherently, it must be conditioned by the existing mechanical means of intercourse and communication. It seemed that the nation would be sufficiently fortunate were it to be born with promise of maintaining existence, and it was neither possible nor advisable to scrutinize its powers of which future necessity or expediency might require an extension for the purposes of the nation. And, moreover, the growth of postal facilities, from their first manifestation up to the adoption of the Constitution was not sufficiently pronounced to augur a great deal for the future. Travel and intercourse were extremely difficult; and the cognate questions were to come only with the development of society.

The maintenance of postal facilities has always been a recognized function of the state, and this was true even in early Rome. In England, the sixteenth century saw the first definite steps for the establishment of a service, but even before this communications were carried by royal messengers compensated by the Crown. Private posts were, of course, used, but official letters on state matters constituted so large a bulk of the correspondence and the problem was one so fitted for solution by the state that it was inevitable that the postal establishment should be conducted under the auspices of, and supported directly by the government.⁵

In the American colonies the first attempt to establish a mail service was made in 1639 by the General Court of Massachusetts. "For preventing the miscarriage of letters, . . . It is ordered that notice bee given, that Richard Fairbanks, his house in Boston, is the place appointed for all letters, which are brought from beyond the seas, or are to bee sent thither; . . . are to bee brought to him and hee is to

⁵ Hemmeon, *The History of the British Post Office*, p. 3 ff.

take care, that they bee delivered or sent according to their directions and hee is allowed for every such letter 1*d*. and must answer for all miscarriages through his owne neglect in this kind; provided no man shall bee compelled to bring his letters thither except hee please." So runs the entry in the court records.⁶

This, however, applied only to foreign mail, and it was not until December, 1672 that there was an effort to establish a domestic post, Francis Lovelace, governor of New York, taking the initiative, and his messenger going to Connecticut. Soon afterwards the General Court of Massachusetts appointed a postmaster and a proclamation was issued by the home government calling for the establishment of postoffices at convenient places on the American continent.⁷

The office of postmaster general for America was created in 1692, permission being granted Thomas Neale and his executors by the Lords of Trade and Plantations to establish "an office or offices for the receiving and dispatching letters and packets, and to receive, send and deliver the same under such rates and sums as the planters shall agree to give."⁸

The next forty years saw some extensions of postal facilities, but the improvement was slight. In 1683 William Penn established a postoffice in Pennsylvania, and in 1736 a weekly mail was begun between Boston and New York, but intercolonial communication was very restricted, and it was not until 1737, with the appointment of Benjamin Franklin as postmaster general at Philadelphia and postmaster general of the Colonies in 1753 that there were any noticeable gains, or any signs of important developments

⁶ Mass. Historical Collections, 3d Series, vol. vii, p. 48; quoted by Mary E. Wooley in her monograph on "Early History of the Colonial Post Office," Publications of the Rhode Island Historical Society, New Series, vol. i, p. 270 ff.

⁷ Hemmeon, p. 32; Joyce, *The History of the Post Office from its Establishment down to 1836*, p. 196.

⁸ Wooley, *Early History of the Colonial Post Office*, p. 275; Hemmeon, p. 33. See also Pliny Miles, "History of the Post Office," *American Bankers' Magazine*, n. s., vol. vii, p. 358 (November, 1857).

for the state function of which he was placed in charge. Franklin was active in establishing new posts as far as was possible and began the practice of sending newspapers through the mails free of charge. When he was turned out of office in 1774, he wrote that "before I was displaced by a freak of the ministers, we had brought it [the postoffice] to yield three times as much clear revenue to the crown as the postoffice in Ireland. Since that impudent transaction they have received from it not one farthing."⁹

After Franklin's dismissal the new postmaster at Philadelphia raised the rates on newspapers to such proportions that William Goddard, an editor of Baltimore and Philadelphia, was forced to discontinue the publication of his journal. In March, 1774 Goddard began a lengthy journey through the New England States to gain support for the "Constitutional American Post Office" which he hoped to establish.¹⁰ A tentative line was inaugurated between Baltimore and Philadelphia, but this was gradually extended so as to provide tolerably adequate facilities for all of the colonies, Goddard having secured the support of the assemblies in New Hampshire, Massachusetts, Rhode Island, New Jersey, and New York.¹¹ He realized from the first that the facilities he was seeking should be furnished under the auspices of the Continental Congress, and when this body acted on July 26, 1775 and agreed to the establishment of a post, Goddard's plans were accepted.¹²

The establishment of postal facilities was one of the very first problems taken up by the Continental Congress when it began to exercise sovereign powers which it did not legally possess, but which of necessity it had to assume. On May 29, 1775 the Congress resolved that, "As the present critical situation of the colonies renders it highly desirable that ways and means should be devised for the speedy and secure conveyance of Intelligence from one end

⁹ Miles, p. 361.

¹⁰ American Archives, Fourth Series, vol. i, pp. 500-504.

¹¹ Ibid., vol. ii, p. 536 ff.

¹² See Jameson (Ed.), *Essays in Constitutional History*, p. 168 ff.

of the Continent to the other," a committee be appointed to consider the best means of establishing a post,¹³ and on July 26, 1775 the Congress took up the committee's report, appointed Benjamin Franklin postmaster general for the United Colonies, established a line of communication from Falmouth to Savannah and recommended the inauguration of cross posts within the discretion of the postmaster general.¹⁴ Franking privileges were almost immediately established for the members of Congress and for the army commanders, and were later extended, with some limitations, to private soldiers in the service.¹⁵

As yet the Congress had not aimed to make its postal establishment a monopoly and so it was a question of war policy rather than of the unrestricted exercise of a governmental function which inspired the motion that the parliamentary posts be stopped. Richard Henry Lee, for example, argued that "the Ministry are mutilating our correspondence in England, and our enemies here are corresponding for our ruin;" but the better opinion prevailed that the measure was an offensive one not proper at that particular juncture. In fact the ministerial post had been of service to the colonists in giving them information which they could not otherwise have obtained, and so it was recommended that the people use the constitutional establishment as much as possible. Before the end of the year, as it turned out, this problem was settled without the intervention of Congress for the British postoffice stopped its service in the colonies.¹⁶

¹³ Journals of the Continental Congress (edited by Ford), ii, p. 71. (References up to 1781 are to this edition, Washington, 1904 . . . Since the sixteenth volume, the editor has been Gaillard Hunt.)

¹⁴ *Ibid.*, vol. ii, p. 208.

¹⁵ *Ibid.*, vol. iii, p. 342; vol. iv, p. 43.

¹⁶ *Ibid.*, vol. iii, p. 488. In the discussion referred to Paine remarked that the "ministerial post will die a natural death; it has been under a languishment a great while; it would be cowardice to issue a decree to kill that which is dying; it brought but one letter last time and was obliged to retail newspapers to pay its expenses." Lee was more facetious, saying: "Is there not a Doctor, Lord North, who can keep this creature alive?" On December 25, 1775, it was announced that incoming mail would not be sent to the various colonies but would be held in New York and advertised.

During the war the adequacy of the postal facilities was often before Congress. Committees were appointed to investigate conditions; Congress by resolution appreciated the fact that the "communication of intelligence with frequency and despatch from one part to another of this extensive continent, is essentially requisite to its safety." The postmaster general was therefore requested to exercise care in the selection of riders and to discharge dilatory ones when discovered. Deputy postmasters were excused "from those public duties which may call them from attendance at their offices;" admonitory resolutions directed ferry keepers to expedite the passage of postriders, and a public monopoly was aimed at through the indirect method of reducing the wages of government messengers who carried private packages.¹⁷

On November 7, 1776, Richard Bache was appointed postmaster general vice Franklin who had gone on the mission to France, and after this change the attempts of Congress to improve the service seem to be more frequent.¹⁸ In January of the next year, Bache was requested to furnish a list of those in the service, it having been reported that "persons disaffected to the American cause" had been employed "with the most mischievous effects" and he was further requested to "assign reasons why the late resolves of Congress for regulating the postoffice are not carried into execution."¹⁹ In February a committee was appointed to revise the regulations; it recommended extensions and suggested that all employees be required to take an "oath of fidelity to the United States and also an oath of office," and urged that once in six months the postmaster general be required to transmit to Congress a list of those in the service.²⁰ The legislatures of the states were asked to exempt from all military duties "persons immediately con-

¹⁷ Journals of the Continental Congress, vol. v, pp. 719, 720; vi, p. 926.

¹⁸ *Ibid.*, vol. vi, p. 931.

¹⁹ *Ibid.*, vol. vii, p. 29.

²⁰ *Ibid.*, p. 153.

cerned in conducting the business of the postoffice," but still the establishment did not work to the satisfaction of Congress, and other committees were appointed to make recommendations and the rates of postage were several times increased. One new step was taken when an inspector of dead letters was appointed to "examine all dead letters at the expiration of each quarter; to communicate to Congress such letters as contain inimical schemes or intelligence; to preserve carefully all money, loan office certificates, lottery tickets, notes of hand, and other valuable papers enclosed in any of them, and be accountable" for their safekeeping, subject to the restriction that he take "no copy of any letter whatever," and refuse "to divulge their contents to any but Congress or those whom they may appoint for the purpose."²¹

Meanwhile the Articles of Confederation had been agreed upon and submitted to the states. There was no objection to a grant of the postal power, but the terms in which it was made limited its extent. Part of Article XVIII in the first draft gave the United States "the sole and exclusive right and power of . . . establishing and regulating post-offices throughout all the United Colonies, on lines of communication from one colony to another," and later on in the same article, it was provided that the United States "shall never impose or levy any taxes or duties except in managing the postoffice."²² In the second draft, the grant was made more limited; it gave Congress "the sole and exclusive right and power . . . of establishing and regulating postoffices from one state to another throughout all the United States and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of said office." In this form the clause became part of the Articles of Confederation as adopted by the states,²³ and there was no further discussion of the power,

²¹ Journals of the Continental Congress, vol. vii, pp. 258, 347; ix, 816, 817, 898; xi, 550.

²² Ibid., vol. v, p. 551.

²³ Ibid., pp. 681, 682; ix, 907. In the second draft the postal clause comes under Article 14 and in the final draft under Article 9.

negative action being taken on the motion of the Pennsylvania delegates (June 25, 1778) "that such part of the 9th article as respects the postoffice, be altered or amended so as that Congress be obliged to lay the accounts annually before the legislatures of the several states."²⁴

The Articles of Confederation gave the limited power of establishing and regulating postoffices "from one state to another." Thus, intrastate postal facilities were beyond the purview of Congress; nothing was said, moreover, about the establishment of postroads, or the opening up of new routes, and the sole power of taxation granted to Congress was confined to an amount sufficient to defray the expenses of the system. Nevertheless, the inadequacy of the grant was theoretical rather than real, since Congress was so occupied with other more pressing affairs, that it was content with a limited communication of intelligence, desiring solely that this be as speedy and secure as possible.

From this time on references to the postal establishment in the congressional journals are of frequent occurrence; additional investigating committees were established and the personnel of the standing committee was changed. Expenses grew apace while the revenues diminished and this called for measures of retrenchment. A resolution of December 27, 1779, contained the regulation that "the post shall set out and arrive at the place where Congress shall be sitting twice in every week," and it was at the same time urged that "the whole expensive system of express riding be totally abolished except by the particular order of Congress upon very special occasions."²⁵

On October 18, 1782, under the power granted by the Articles of Confederation, there was passed "An Ordinance for Regulating the Post-Office of the United States of America." For the period it was a most elaborate statute and marks the birth of a real postal establishment. Of such

²⁴ Journals of the Continental Congress, vol. xi, p. 652. The vote stood, Ayes, 2; Noes, 9.

²⁵ Ibid., vol. xv, p. 1411.

comprehensiveness was the act that when, ten years later, Congress passed legislation under the authority delegated by the Constitution, the Ordinance was merely amplified. Its preamble recited:

"Whereas the communication of intelligence with regularity and dispatch from one part to another of these United States is essentially requisite to the safety as well as the commercial interest thereof; and the United States in Congress assembled being by the Articles of Confederation vested with the sole and exclusive right and power of establishing and regulating postoffices throughout all these United States; and whereas it is become necessary to revise the several regulations heretofore made relating to the postoffice and reduce to one act:

"Be it therefore ordained by the United States in Congress assembled, and it is hereby ordained by the authority of the same, that a continued communication of posts throughout these United States shall be established and maintained by and under the direction of the postmaster general of these United States to extend to and from the state of New Hampshire to the state of Georgia inclusive, and to and from such other parts of the United States as from time to time he shall judge necessary or Congress shall direct."²⁶

The duties of the postmaster general were "to superintend and direct the postoffice in all its various departments and services . . . agreeably to the rules and regulations" of the ordinance. He was given the power to appoint an assistant and deputies, for whom he should be responsible; to station them, and to fix their commissions, with a maximum limit of 20 per cent. on money "to arise from postage in their respective departments." He was given the further power of appointing postriders, messengers and expresses.

In this ordinance, moreover, Congress attempted to lay down certain regulations, infraction of which would be punishable, although not criminally or in an efficient manner. All persons in the service were forbidden knowingly or

²⁶ 7 Journals of Congress (Ed. of 1800), 383.

wilfully "to open, detain, delay, secrete, embezzle, or destroy, or cause, procure, permit, or suffer to be opened, detained, delayed, secreted, embezzled or destroyed, any letter or letters, packet or packets, or other dispatch or dispatches, which shall come into his power, hands, or custody, by reason of his employment in, or relation to, the post-office, except by the consent of the person or persons by or to whom the same shall be delivered or directed, or by an express warrant under the hand of the president of the Congress of these United States or in time of war, of the commander in chief of the armies of these United States, or of the chief executive officer of one of the said states, for that purpose, or except in such other cases wherein he shall be authorized to do so by this ordinance."

All persons in the postal service were required, antecedent to their employment, to take an oath promising to carry out and obey these meticulous provisions to safeguard the mails, but the method of enforcement was ineffective. Congress provided that "if the postmaster general shall be guilty of the said oath or affirmation or any part thereof, and be thereof convict, he shall forfeit and pay 1,000 dollars in an action of debt in the state where the offense shall be committed, by the treasurer of the United States for the time being." The penalty for other employees was \$300, but all were "rendered incapable ever hereafter of holding any office or place of trust or profit under these United States."²⁷

In order to make probable a higher degree of efficiency and to insure adequate revenues, the Congress attempted to make and enforce a monopoly. The Ordinance specified that the postmaster and his assistants, but "no other person whatsoever shall have the receiving, taking up, ordering, dispatching . . . carrying and delivering of any letters, packets or other dispatches, from any place within these United States for hire, reward, or other profit or advantage . . . and any such person or persons presuming to do so,

²⁷ 7 Journals, 383 ff. Special messengers and expresses were exempted from this provision at the discretion of the postmaster general.

shall forfeit and pay for every such offense, 20 dollars, to be sued for and recovered in an action of debt with costs of the suit." Persons on private missions were exempted and private cross posts could be established with the approval of the postmaster general. By the ordinance rates were fixed and special provisions were made for newspapers which were to be carried "at such moderate rates as the postmaster general shall establish." The franking privilege, finally, was extended to the officials at Washington and single letters could be sent without postage to officers of the line in actual service; by early amendments to the ordinance there were further extensions, Washington was relieved of paying postage and allowance was made for ministers at foreign courts.²⁸

The incompleteness of the national control over the post-office and in particular the inadequacy of the device that really criminal offenses should be punished by civil suits, were shown in January, 1784 when Congress considered a robbery which had taken place at Princeton. The mail had been carried off and some days later was found in a meadow, several letters having been lost and several more, franked by members of Congress, having been broken open. The "supreme executive of the state of New Jersey" was requested to undertake an investigation to discover those guilty, but when his reply exculpated the Princeton postmaster "from every suspicion of collusion or fraud" the inquiry was dropped. Congress could proceed no further.²⁹

Another incident showing general acceptance of the fact that the regulation of the mails and the punishment of offenses against them should be under plenary national control, occurred a few months later and was considered by the Committee of the States during a recess of Congress. An investigating committee reported that an advertisement of French packet boats was "an open avowal of an intention to contravene an ordinance of Congress for regulating

²⁸ 8 Journals, 40, 131, 193; 9 Journals, 130.

²⁹ 9 Journals, 15, 147.

the postoffice of these United States; and that the measures therein mentioned . . . are a flagrant violation of the same ordinance . . . will greatly injure the revenue of the post-office, and, if not prevented, may defeat that useful institution." The Committee of the States agreed to the report and directed that if the postmaster general should determine that the ordinance had been violated, he should cause the prosecution of the offenders according to law, namely, make them defendants in actions of debt for the penalties provided by the ordinance.³⁰

On September 4, the postmaster general was given authority to contract for the conveyance of the mails by stage carriages, if practicable, for one year, but on the part of some of the states considerable opposition developed. A motion was made to construe the words "if practicable" as not binding the postoffice "to form the contract for the transportation of the mail on terms inconvenient to the mercantile interest, or to comply with the extravagant demands of the contractors," but the vote was in the negative and a second attempt to modify the original instruction was also unsuccessful.³¹ The later motion showed a disposition on the part of the states to desire flexible national regulations, which would not necessarily be uniform, but would be adapted to local needs. The resolution recited that in respect to the states of New Jersey, Pennsylvania, Delaware, Maryland and Virginia, the mails might "be carried upon more reasonable and convenient terms should the postmaster general be left at liberty to contract for the same either by stage carriages or postriders, as shall appear to him most conducive to the public interest.

"And whereas the intention of Congress in having the mail transported by stage carriages was not only to render their conveyance more certain and secure, but by encouraging the establishment of stages to make intercourse between different parts of the union less difficult and expensive than

³⁰ 9 Journals (App.), 10.

³¹ 11 Journals, 154, 191.

formerly; and as a discretionary power in the postmaster general either to employ postriders or contract with the owners of stage carriages for conveying the mail in the states of North Carolina, South Carolina, and Georgia might interfere with the object of promoting and establishing the running of stages in said states, Resolved, that so far as respects these states it is improper to alter the postmaster general's present instructions."³² Thus very early attempts were made to secure special local facilities.

During this period, however, subsequent to the ordinance of 1782, Congress took no important action in regard to the postoffice. It annually gave the postmaster general authority to contract for the succeeding year, and to encourage the useful institution of the postoffice when it could be done without material injury to the public.³³ In the enforcement of federal regulations, as has been said, the government was limited by having to sue in actions of debt, and so it was a foregone conclusion that the postal power, inadequately vested in Congress under the Articles of Confederation, would be one of the grants contained in the Constitution. The Pinckney plan as it was submitted to the Committee of Detail, mentioned "establishing Post-Offices" as one of the exclusive powers of "the Senate and House of Delegates in Congress assembled."³⁴ Pinckney's original draft outlined the power as that "of establishing Post-Offices and raising a revenue from them."³⁵

In the Convention Mr. Paterson on June 15, 1787 sug-

³² Congress approved the action of the postmaster general in directing his deputies not to receive the paper money of any state for postage, and to accept only specie. He was also authorized to demand payment in advance. 11 Journals, 84, 164.

³³ 12 Journals, 137.

³⁴ Farrand, *Records of the Federal Convention*, vol. ii, p. 135.

³⁵ This is the draft as reconstructed by Professor Farrand (vol. iii, pp. 604, 607), but the document sent by Pinckney in 1819 to John Quincy Adams for publication in the journal, omitted the last clause. This draft, however, was written not very long before 1819, and was not presented to the Convention in 1787. See Records, vol. iii, p. 595 ff.; "Sketch of Pinckney's Plan for a Constitution, 1787," in *American Historical Review*, vol. ix, p. 735, and Bancroft, *History of the Constitution*, vol. i, p. 258.

gested "that in addition to the power vested in the United States by the existing articles of Confederation, they be authorized to pass acts for raising a revenue, . . . by a postage on all letters and packages passing through the general postoffice, to be applied to such federal purposes as they shall deem proper and expedient."³⁶ The report of the Committee of Detail was made to the Convention on August 6 and provided (Art. VII) that "The Legislature of the United States shall have the power . . . to establish post-offices."³⁷

Ten days later, the Committee's report being under consideration it was proposed that the words "and postroads" be added. This was carried by a close vote, though it is difficult to attribute the opposition to any source other than a general fear of giving the federal government too much power and thus endangering the chances for adoption.³⁸ To this feeling also, may be ascribed the result that, when, later, some urged the insertion of an additional grant "to regulate stages on the post roads," the proposal was not reported from the Committee of Detail.³⁹ Such a power has, however, been fully exercised.

The report of the Committee of Style, made on September 12, fixed the grant as that "to establish postoffices and postroads," this being the form in which it became a part of the Constitution.⁴⁰ Dr. Franklin, however, advocated that there be added "a power to provide for cutting canals where deemed necessary."⁴¹ The motion was seconded, but Mr. Sherman started the opposition by objecting on the ground that the "expense in such cases will fall on the United States and the benefits accrue to the places where the canals may be cut." Mr. Wilson, on the contrary, argued that

³⁶ Farrand, vol. i, p. 243.

³⁷ Ibid., vol. ii, p. 177.

³⁸ Ibid., p. 303. New Hampshire, Connecticut, New Jersey, Pennsylvania and North Carolina were opposed. Rhode Island and New York did not vote. The other states were in favor.

³⁹ Ibid., p. 324.

⁴⁰ Constitution, Art. I, Sec. 8, Clause 7; Farrand, vol. ii, p. 590.

⁴¹ Farrand, vol. ii, p. 615.

instead of being an expense to the United States, the canals might be made a source of revenue, and Madison wanted "an enlargement of the motion into a power to grant charters of incorporation where the interest of the United States might require, and the legislative provisions of the individual states might be incompetent. His primary object, however, was to secure an easy communication between the states which the free intercourse, now to be opened, seemed to call for. The political obstacles being removed, a removal of the natural ones as far as possible ought to follow."⁴² The question, however, was limited to the single case of canals, and when put to a vote was defeated, because there was an antipathy to monopolies,⁴³ and because, as Gouverneur Morris admitted, "It was extremely doubtful whether the Constitution they were framing could ever be passed at all by the people of America; that to give it its best chance, however, they should make it as palatable as possible, and put nothing into it, not very essential, which might raise up enemies."⁴⁴

This history of the postal clause in the Federal Convention offers little of interpretative importance. The intent of the framers is sufficiently clear, although, as pointed out by one commentator, the delegation is clothed in words which

⁴² Farrand, vol. ii, p. 615.

⁴³ The vote on the motion was 8 to 3 (New Hampshire, Connecticut, Massachusetts, New Jersey, Delaware, Maryland, North Carolina, and South Carolina opposed; Pennsylvania, Virginia, Georgia in favor). This incident in the Federal Convention was to figure in the congressional debates over the incorporation of banks and the construction of postroads. Opinions have differed as to whether the action of the Convention may be said to show that the Constitution did not contemplate the exercise by Congress of a power to incorporate. Madison's record says: "Mr. King thought the power unnecessary. . . . Mr. Wilson mentioned the importance of facilitating by canals the communication with the Western Settlements. As to Banks, he did not think with Mr. King that the power in that point of view would excite the prejudices and parties apprehended. As to mercantile monopolies, they are already included in the power to regulate trade." Farrand, vol. iii, p. 615. Madison's later opinion (1824) was that a general power to incorporate had been negatived. *Ibid.*, p. 463.

⁴⁴ Jefferson's Anas in T. J. Randolph, *Memoir, Correspondence . . . of Thomas Jefferson*, vol. iv, p. 506.

"poorly express its object" and "feebly indicate the particular measures which may be adopted to carry out its design. To establish post offices and post roads is the form of the grant; to create and regulate the entire postal system of the Government is the evident intent."⁴⁵

It is possible partially to explain the specific negating of the power to cut canals on the ground that there was no limitation to those cases in which the construction would have been an aid to interstate commerce or the transportation of the mails. Under the amendment as proposed Congress would have had the authority to cut a waterway wholly within a state for purely intra-state purposes.⁴⁶ As a matter of fact, however, this power, which later was to give rise to considerable controversy, has been exercised by the federal government under its authority to regulate interstate commerce and establish postroads, just as the postal grant itself has been extended to cover fields, neither existing nor within the range of possibility when the Constitution was adopted.

In the state conventions there was practically no discussion of the postal power. Its innocuousness was granted. Mr. Jones of New York was alone in finding a latent aggression, and it was resolved, as the opinion of the state committee, "that the power of Congress to establish post-offices and postroads is not to be construed to extend to the laying out, making, altering, or repairing highways, in any state, without the consent of the legislature of such state."⁴⁷ Such a stipulation was destined very soon to become a mere *brutum fulmen*.⁴⁸

⁴⁵ Pomeroy, Constitutional Law, p. 264.

⁴⁶ See Brown, The Commercial Power of Congress, p. 132.

⁴⁷ Elliot's Debates, vol. ii, p. 406.

⁴⁸ See Moore, American Eloquence, vol. i, p. 349.

CHAPTER II

THE POWER OF CONGRESS TO ESTABLISH POSTOFFICES

Expansion of Facilities.—"Our whole economic, social and political system," says President Hadley, "has become so dependent upon free and secure postal communication, that the attempt to measure its specific effects can be little less than a waste of words."¹ This is hardly an overstatement of the case, yet, as we have seen, the importance of the postal function was recognized before the Constitution was adopted and when it comprehended only the transmission of intelligence. The increased importance, however, has been absolute as well as relative, since through the postoffice the government now does much more than merely facilitate communication between its citizens.

An act for the temporary establishment of the postoffice was passed by Congress on September 22, 1789.² It provided for the appointment of a postmaster general, all the details and regulations to be as they "were under the resolutions and ordinances of the late Congress. The postmaster general to be subject to the direction of the president of the United States, in performing the duties of his office, and in forming contracts for the transportation of the mail."³

For a considerable period congressional and administrative efforts were devoted almost exclusively to the extension of facilities; postoffices were established as rapidly as possible; every effort was made to secure speedy transportation of the mail, to insure its security, to prevent private competi-

¹ Art., "Postoffice," Lalor, *Cyclopaedia of Political Science*, vol. iii, p. 310.

² 1 Stat. L. 70.

³ This act was limited to August 12, 1790. On August 4, 1790, it was continued until March 4, 1791; on March 3 until February 20, 1792, when Congress passed "An Act to establish the postoffice and postroads in the United States." 1 Stat. L. 178, 218, 232.

tion, and by means of an increasingly efficient system to weld together distant parts of the country. The communications of the postmasters general are devoted to recommendations for the improvement of the service;⁴ presidential messages take pride in reporting the growth of the establishment, which was rapid. In 1790 there were about 100 postoffices in the country; the receipts from October, 1790 to October, 1791 were \$31,706.27 and the disbursements left a balance of \$5,498.51.⁵

But in 1823 Monroe was able to report to Congress that 88,600 miles of postroads had been established by law and that the mail was transported over 85,700 miles of this total.⁶ During the two years from July 1, 1823 the increase of the transportation of the mail exceeded 1,500,000 miles annually and 1,040 new postoffices were established.⁷ In 1828 the total mileage was 114,536 as compared with 5,642 in 1792 and in 1837 was 142,877 miles.⁸ The receipts from postage for the year ending March 31, 1828 were \$1,058,204.34. These figures serve, in some measure at least, to indicate the rapid expansion of the postal system.⁹

At the same time there was a commensurate recognition of the importance of the establishment in the attitude of Congress and the executive in dealing with it as an administrative arm of the federal government. The act of 1810 referred to the "postoffice establishment"; an incidental use of the word "department" is to be found in the laws of

⁴ For example, Gideon Granger, postmaster general, wrote in 1810: "From the nature of our government it becomes a matter of the highest importance to furnish the citizens with full and correct information, and, independent of political considerations, the interests of society will be best promoted, particularly in the interior, by extending to it the facilities of this office. Nor can the seaboard complain as it puts a profit on all that the interior produces for exportation, and on all it consumes from foreign countries." *American State Papers (Postoffice)*, vol. xv, p. 42.

⁵ Williams, *The American Postoffice*, p. 20 (61st Congress, 2d Sess., Sen. Doc. No. 542).

⁶ Richardson, *Messages and Papers of the Presidents*, vol. ii, p. 215.

⁷ *Ibid.*, p. 311.

⁸ *Ibid.*, p. 419.

⁹ Williams, p. 25.

1799 and 1810,¹⁰ but the system became an executive department in 1872 when Congress, codifying the postal laws, passed an act under which the department is now organized.¹¹ In 1827 the postmaster general's salary was increased to \$6,000 per annum, and he was thus placed on an equality with cabinet officers; two years later Jackson made him a member of his official family.¹²

Later in this essay will be found a consideration of the use made by Congress of the postroads clause,¹³ in the assumption of authority to aid in works of internal improvement, but here some mention should be made of the connection which has existed between the desire for a speedy transportation of the mail and aid granted to railroads. This aid took the form of donations, with mail service free or at reasonable rates, loans to companies, and general contracts for service, with the purpose of giving aid as well as paying compensation.¹⁴ In debating the desirability of governmental stock subscriptions in transportation undertakings Congress often adverted to the carriage of the mails; and in 1834 it was proposed to give the Baltimore and Ohio Railroad Company \$320,000 in return for which the mail was to be carried free forever.¹⁵ Similar suggestions were made from time to time, but there was little definite action, and in 1845 the postmaster general was authorized to contract for the transportation of the mail by railroads, without inviting bids.¹⁶

Since 1850 the postoffice has not been used, at least

¹⁰ 2 Stat. L. 592, and 1 Stat. L. 733.

¹¹ Learned, *The President's Cabinet*, p. 231. See also *U. S. v. Kendall*, 5 Cranch (U. S. C. C., 1837), 275.

¹² Bassett, *Life of Andrew Jackson*, vol. ii, p. 413. "... in introducing the postmaster general into the cabinet, Jackson began a practice that probably tended, in the long run, to invigorate the workings of the postal establishment, notwithstanding the fact that Barry, successor to McLean in the office, made a conspicuously dismal record." Learned, p. 250.

¹³ Below, Chapter III.

¹⁴ See Haney, *Congressional History of Railways*, p. 319 (*Bulletin of the University of Wisconsin: Economic and Political Science Series*, vol. iii).

¹⁵ 10 *Congressional Debates*, 1752.

¹⁶ Haney, p. 323.

avowedly, to aid railways; the period has rather been one of regulation. Disputes have arisen over the proper compensation for service rendered, and companies have refused to give facilities for transportation.¹⁷ It was proposed, therefore, that the roads be forced to carry the mails, and in 1870 an act to this effect was applied in the District of Columbia, compensation to be determined by three commissioners. But in 1872,¹⁸ the codification of the postal laws provided rates for service, with compulsory service by the roads which had received land grants; if the companies were not satisfied with the amounts fixed by Congress, letters were to be forwarded by horse, and the articles for which expedition was not required, were to be sent by stage.¹⁹ At present compensation is determined by an elaborate system, under maximum rates fixed by Congress. The postmaster general may make reductions for refusal to transport, when required, upon the fastest trains,²⁰ and may impose fines for inefficient service and delays.²¹ The necessity has not arisen, but if the railways should refuse to carry the mails, on the ground of inadequate compensation, Congress would have the right to compel transportation, upon reasonable compensation for the taking of private property for public use.²²

This, however, is only one phase of the financial problem of the postoffice; another, very important phase involves the cost to patrons. Rates for the transmission of letters remained practically unaltered until 1845, while the charges for newspapers were slightly changed in the direction of allowing the publishers special privileges. The act of 1845²³ exercised a broad authority of classification, separat-

¹⁷ 48th Cong., 2d Sess., Sen. Exec. Doc. No. 40.

¹⁸ 16 Stat. L. 115; 17 Stat. L. 309.

¹⁹ Haney, p. 206 (Bulletin of the University of Wisconsin: Economic and Political Science Series, vol. vi).

²⁰ 23 Stat. L. 156.

²¹ See Postal Laws and Regulations of 1913, Title X, "Transportation of the Mails," p. 607 ff.

²² See 43d Cong., 1st Sess., Sen. Rep. No. 478. This point is developed below, p. 151 ff.

²³ 5 Stat. L. 733.

ing the mail in order to expedite it, and introducing the free privilege for newspapers not more than 1,900 square inches in size, distributed within 30 miles of the place of printing. The act of 1847²⁴ allowed free exchanges only between publishers, and following this statute many changes were made, both in the conditions of exemption from postage and the rates which were charged. The classification now obtaining was adopted in 1879,²⁵ and the cent a pound rate for periodical matter admitted to "second class" privileges was fixed in 1885.²⁶

But while concessions were made to encourage the circulation of newspapers, Congress maintained rigid restrictions in respect to the size of the packages that could be carried in the mails. The limit was three, and later four pounds. This was originally due to the fact that large packages could not be handled with convenience by the system and were likely to injure or deface other mail matter. But when federal facilities became sufficient to take off, or at least raise, the weight limit, the express companies, which at this time were beginning to derive a large revenue from carrying parcels, were able to postpone congressional action until August 24, 1912²⁷ when the Parcels Post Act was passed after it had been repeatedly recommended by postmasters general and long desired by public opinion.²⁸ Such delay has, of course, not been without bitter criticism,²⁹ and in

²⁴ 9 Stat. L. 202.

²⁵ 10 Stat. L. 38.

²⁶ 23 Stat. L. 387. For further details of the special privileges granted periodicals, see Report of the Commission on Second Class Mail Matter (1912), p. 57 ff.

²⁷ 37 Stat. L. 557. "That hereafter fourth class mail matter shall embrace all other matter, not now embraced by law, in either the first, second, or third class, not exceeding eleven pounds in weight, or greater in size than seventy-two inches in girth and length combined, nor in form or kind likely to injure the person of any postal employee or damage the mail equipment or other mail matter, and not of a character perishable within a period reasonably required for transportation and delivery" (Sec. 8). These limits have been, and will be, raised from time to time.

²⁸ But see Bodley, "The Post Office Department as a Common Carrier and Bank," 18 American Law Review, 218 (1884).

²⁹ See Williams, *passim*.

the forties the rise of the express companies, and their transportation of large packets and in some cases of matter which the postoffice undertook to carry, reduced federal revenues and seriously interfered with the efficiency and effectiveness of the government monopoly.³⁰ But at any time the situation could have been remedied by congressional action. On the other hand, objection has been made to the assumption by Congress under the postoffice clause, of the functions of a common carrier, on the ground that they were not comprehended by the original grant.³¹

Now, Congress clearly has the power to insure, upon the payment of extra fees, the safe transmission of letters or packets to the addressees, but the postal money order system cannot be justified upon any such theory. The act of May 17, 1864³² authorized the postmaster general to establish, "under such rules and regulations as he may find expedient and necessary, a uniform money order system at all post-offices which he may deem suitable therefor." The law fixed thirty dollars as the maximum amount for which an order could be issued, the purpose of the system being to afford "a cheap, immediate and safe agency for the transfer through the mails of small sums of money."³³ In practice the payee or party for whom the money was intended, was not named in the order, which was given to the applicant upon the payment of the sum specified and the proper fee, and his filling out a printed form of application. This was forwarded to the postmaster at the office upon which the order was drawn, and the latter, therefore, had the information necessary to detect fraud if any was attempted. The

³⁰ Reports of the Postmaster General, 1841-1845.

³¹ "It might be easily shown, for instance, that the power over the mails is limited to the transmission of intelligence, and that Congress cannot, consistently with the nature and object of the power, extend it to the ordinary objects of transportation, without a manifest violation of the Constitution, and the assumption of a principle which would give the government control over the general transportation of the country, both by land and water." Speech of John C. Calhoun. 12 Debates of Congress, 1142. See also 18 American Law Review, 218.

³² 13 Stat. L. 76.

³³ Report of the Postmaster General, 1864, p. 24.

issue of these postal notes was discontinued in 1894,⁸⁴ although their use has since been urged;⁸⁵ under the money order system as it now obtains, the payee is named in the instrument.⁸⁶

In the Senate there was no debate other than on the administrative features of the law of 1864;⁸⁷ the constitutional question was not discussed. Some doubt, however, has since been expressed as to the power of Congress to establish a system of postal savings banks. These were, according to the title of the act, to hold "savings at interest with the security of the government for repayment thereof, and for other purposes." It was provided that available funds should be used in the redemption of United States bonds, and the act recited, "that the faith of the United States is solemnly pledged to the payment of the deposits made in the postal savings depository offices, with accrued interest thereof, as herein provided." This section would seem to imply that the receiving of deposits could be considered as borrowing money on the credit of the United States.

Objection, upon constitutional grounds, was, however, made by Mr. Moon of Tennessee, in a minority report which he presented to the House of Representatives.⁸⁸ He argued that no express authority could be found in the Constitution, and that "the depository is not a bank within the legal meaning of that word; nor do the trustees created by this act collect money (deposits) from the people for governmental purposes, but simply become federal trustees of private funds for loan or reinvestment at interest."

It would seem, however, that the provision for redeeming United States bonds and the general tenor of the law, could,

⁸⁴ 28 Stat. L. 30.

⁸⁵ See Reports of the Postmaster General, 1908-1911.

⁸⁶ Postal Laws and Regulations of 1913, Title VIII, "Money Order System," p. 529 ff.

⁸⁷ Congressional Globe, 38th Cong., 1st Sess., pp. 1694, 1771, 1861.

⁸⁸ Act of June 25, 1910; 36 Stat. L. 814. A system had been recommended by postmasters general in 1871-1873, 1880-1882, 1887-1890, 1907-1909. See 61st Cong., 2d Sess., House Rept. No. 1445, and for Mr. Moon's argument, *ibid.*, Part 2.

without violence, enable the system to be looked upon as established for the purpose of borrowing money on the credit of the United States, or of obviating in some degree the issuance of emergency currency in financial crises through the deposit with the government, and subsequent circulation, of large sums of money which has hitherto been hoarded. But apart from this, while extensions of the postal function to include banking facilities for the receipt of deposits and the issuance of money orders, were certainly not contemplated by the framers of the Constitution, and are not connected with the transmission of intelligence, they are, from foreign precedent, logical parts of the modern postal power. It is extremely difficult, moreover, for a citizen to show an amount of interest sufficient to bring before the courts the constitutionality of such non-essential functions of the government.³⁹ And especially is this the case when their exercise does not entail taxation, but actually results in increased revenues, and interferes slightly if at all, with the exercise of the same functions by private undertakings. Finally, it should be remembered that the powers granted in the postal clause "are not confined to the instrumentalities of commerce, or the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances."⁴⁰ According to this view there is no constitutional doubt as to the right of the postoffice to engage in the banking activities thus far attempted.

Collectivist Activities.—The primary purpose of the postal power is, of course, the transmission of intelligence, but with vast equipment and organization once in existence, it is a comparatively simple matter for the government to increase in number and in kind, the services which the postoffice may perform for its patrons. In New Zealand postoffices,

³⁹ *Wilson v. Shaw*, 204 U. S. 24 (1907).

⁴⁰ *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S. 1 (1877).

for example, a person can buy stamps, mail a letter or parcel, send a telegram, deposit money, collect a pension, report births and deaths, and insure his life.⁴¹

It is due, in part, at least, to the federal system of government in the United States that Congress has been reluctant to increase the functions of the postoffice. But the money order system and postal savings banks have now been established, and it seems inevitable that the telegraph and telephone systems of the country will shortly be nationalized.⁴² So also rural free delivery has caused congressional aid to be given to the good roads movement and several schemes have been proposed for extensive road construction under federal auspices.⁴³

The inauguration of the parcel post, which in fact has made the postoffice a common carrier, has led to serious efforts on the part of the government towards an adequate appreciation, by possible users, of the advantages of the new facilities, and a campaign of education is carried on, not so much with a view of increasing revenues, as of fostering the "producer to consumer" movement, particularly in farm products. Congress authorized the Secretary of Agriculture "to acquire and diffuse among the people of the United States useful information on subjects connected with the marketing and distributing of farm products" and under this authority the Office of Markets was established on May 16, 1913.⁴⁴ It employs specialists in marketing various commodities, and issues bulletins on the facilities for, and advantages of, shipping different products by parcel post. Agents are sent to appropriate sections of the country to do personal work and local offices are active in collecting lists of the names of farmers and others who have produce to

⁴¹ Davies, *The Collectivist State in the Making*, p. 39.

⁴² Below, Chapter VI.

⁴³ Below, p. 80 ff. See also "The States and their Roads," *N. Y. Nation*, August 20, 1914, and Bourne, "Practical Plan to Spend \$3,000,000 for Public Roads," *N. Y. Times*, May 11, 1913.

⁴⁴ Annual Reports of the Department of Agriculture, 1914 (Report of the Chief of the Office of Markets).

sell, and printing and distributing these lists to postal patrons who may become purchasers.⁴⁵

It is proposed, furthermore, to use postoffices as employment bureaus, and a bill, the adoption of which was strongly urged on the Sixty-third Congress by Senator Clapp, provided that the postmaster general establish, "under such rules and regulations as he may prescribe, mutual employment exchanges at all presidential postoffices, where registers may be kept of any and all persons who make application to be registered, as either seeking employment, or seeking employees, which information may also be exchanged between such offices, all in the interest of the proper and timely distribution of labor throughout the country."⁴⁶ This service would be made self-sustaining through the sale of registration stamps. The bill failed of passage.

But pending action of this character, or the adoption by Congress of legislation designed to lessen unemployment without using the postoffice, the Secretary of Labor and the Postmaster General, cooperated in formulating an arrangement by which "information relating to the distribution of labor could be widely scattered and posted under the auspices of the United States Government.

"The plan," Secretary Wilson goes on to explain, "consists of dated bulletins sent out by the Department of Labor to postmasters throughout the country, by whom they are posted on the bulletin boards so that every postoffice patron,—and this means every man, woman and child,—can easily refer to the information. These are known as 'Bulletins of Opportunities.' They are replaced with others from time to time as necessary, and suitable notice is given when they become inoperative. This plan has received the indorsement of the various state authorities, who have been, and are, cooperating with the Department of Labor in scattering in-

⁴⁵ Report of the Postmaster General, 1914, p. 8 ff. See also U. S. Department of Agriculture, *Farmers' Bulletins*, *inter alia*, Nos. 594 and 611, and *The National Parcel Post News* (Washington), October 7, 1914, and weekly thereafter.

⁴⁶ S. 5180, 63d Cong., 2d Sess. (April 8, 1914).

formation about labor opportunities and conditions in their respective states.”⁴⁷

In collectivist facilities, either at present in existence or very seriously urged, the American postoffice is, then, not far behind that of New Zealand. It affords a significant illustration of the tendency of the federal government gradually to engage in many activities, properly national, which are too big for the states, and too expensive or paternalistic for private undertakings. The aim is that the maximum benefit may inure to the citizen.

Postal Crimes.—The postal power, as Marshall pointed out in *McCulloch v. Maryland*,⁴⁸ “is executed by the single act of making the establishment. But from this has been inferred the power and duty of carrying the mail along the postroad, from one postoffice to another. And from this implied power has again been inferred the right to punish those who steal letters from the postoffice, or rob the mail. It may be said with some plausibility that the right to carry the mail and to punish those who rob it is not indispensably necessary to the establishment of a postoffice and postroad. The right is indeed essential to the beneficial exercise of the power, but not indispensably necessary to its existence.”

Such a power was asserted even before the adoption of the Constitution; the Ordinance of 1782 meticulously forbade the employees to delay or rob the mails, under penalty of fines “to be used for and recovered in an action of debt” by the treasurer of the United States; a supplementary ordinance attempted to establish a monopoly, and it was made lawful for the postmaster general “to allow and pay to any informer, one moiety of the penalties which may be recovered upon his information, for offences, against the fourth and fifth clauses of the above mentioned ordinance.”⁴⁹

The Act of February 20, 1792⁵⁰ greatly extended these

⁴⁷ Wilson, “Uncle Sam; Employment Agent,” *The Outlook*, February 17, 1915, p. 395.

⁴⁸ 4 Wheat. 316 (1819).

⁴⁹ See above, p. 19.

⁵⁰ 1 Stat. L. 232.

criminal provisions, infraction of which was to be punished in the federal courts. Some of the penalties provided for the more serious offences now seem severe, but they are evidence of how important Congress deemed the inviolability of the mails. By this act it was provided, "that if any person shall obstruct or retard the passage of the mail, or of any horse or carriage carrying the same, he shall, upon conviction, for every offence pay a fine not exceeding one hundred dollars. And if any ferryman shall, by wilful negligence, or refusal to transport the mail across any ferry, delay the same, he shall forfeit and pay, for each half hour that the same shall be so delayed, a sum not exceeding ten dollars." A fine and disqualification for holding any office under the United States were the penalties inflicted "if any deputy postmaster or other person authorized by the postmaster general to receive the postage of letters, shall fraudulently demand or receive any rate of postage, or any gratuity or reward, other than is provided by this act for the postage of letters or packets." Vessels were forbidden to enter any port of the United States and break bulk until their letters had been delivered to the postmaster, and the officer of the port could require an oath of delivery. Exception, however, was made in the case of letters to the owner or consignee, and when the vessel had letters directed to another port.

In an effort to make the postal system efficient by insuring it against private competition and the consequent diminution of revenues, there was a provision (still in force, although modified), declaring the federal establishment a monopoly and making any infringement punishable by a fine. The act recited "that if any person, other than the postmaster general or his deputies, or persons by them employed, shall take up, receive, order, dispatch, carry, convey, or deliver, any letter or letters, packet or packets, other than newspapers, for hire or reward, or shall be concerned in setting up any foot or horse post, wagon or other carriage, by or in which any letter or packet shall be carried for hire,

on any established postroad, or any packet or other vessel or boat, or any conveyance whatever, whereby the revenue of the general postoffice may be injured, every person so offending shall forfeit for every such offence, the sum of two hundred dollars.⁵¹ *Provided*, that it shall and may be lawful for every person to send letters or packets by special messenger."

Fine and imprisonment were the punishments for unlawfully delaying, embezzling, secreting, or destroying any letter or package not containing money; but if the letter or packet contained any kind of money, negotiable paper, bonds, or warrants, the punishment upon conviction was death. The carrier was forbidden to desert the mail before he reached his destination; robbing any carrier,⁵² the mail, or the postoffice was punishable by death. Ten dollars was the penalty for an unlawful use of the franking privilege. One half of all the fines recovered went to the persons informing and prosecuting for the offences, and in 1797 it was provided that accomplices in the commission of postal crimes should be subject to the same punishment as the principals.⁵³ In 1810 whipping was abolished,⁵⁴ but the death penalty for a second robbery, or for putting the carrier's life in jeopardy, was continued. This is strong evidence of congressional insistence upon the sanctity of the mails, since in 1825 only fine and imprisonment were the punishment for assaults on the high seas, or within admiralty jurisdiction with intent to commit a felony.⁵⁵

Upon the basis of these early regulations, Congress has passed many laws calculated to prevent interference with the mails or their misuse; most of the original crimes are still

⁵¹ Changed to \$50 by the act of May 8, 1794; 1 Stat. L. 354.

⁵² Changed by the act of March 2, 1799 (1 Stat. L. 733) to forty lashes and ten years imprisonment for the first offense, but death for the second offense, or if the carrier was wounded or his life put in jeopardy. In 1794 (1 Stat. L. 354) the penalty for stealing mail or letters from the postoffice was changed to fine and imprisonment and in 1799 to thirty lashes and two years imprisonment.

⁵³ Act of March 3, 1797; 1 Stat. L. 509.

⁵⁴ 2 Stat. L. 592.

⁵⁵ Act of March 3, 1825; 4 Stat. L. 122.

forbidden and the changes made have been in detail rather than character, with one important exception: there has gradually been built up an *Index Expurgatorius* of articles which it is unlawful to deposit in, or to take from, the mails for purposes of circulation. But with this exception, the penal laws do not differ radically from those of a century ago.

Nearly all "Offenses against the Postal Service" have been brought together as Chapter 8 of the Criminal Code of the United States.⁵⁶ It is now unlawful to conduct, or profess to conduct, a postoffice without authority; to carry the mail otherwise than according to law; to set up private expresses; to transport persons unlawfully conveying the mail; to send letters by private express or for carriers to convey them over regular post routes otherwise than in the mail; to wear the uniform of a carrier without authority or to pose as a carrier of the United States mail when such is not in fact the case. Injuring mail bags, stealing postoffice property, stealing or forcing mail locks or keys, breaking into or entering a postoffice, unlawfully entering a postal car, stealing, secreting and embezzling mail matter or its contents,⁵⁷ assaulting a carrier with intent to rob and robbing the mail; injuring letter boxes or mail matter; "knowingly and wilfully" obstructing or retarding the passage of the mail, all are crimes punishable in the federal courts.

It is an offence for any employee of the service to detain, destroy or embezzle a letter or newspaper; for a ferryman to "delay the passage of the mail by willful neglect or refusal to transport"; for the master of a vessel to fail to deposit with the postoffice all mail from abroad or to break bulk before making such delivery. No one may sell or use a

⁵⁶ 35 Stat. L. 1088, 1123.

⁵⁷ "Where a letter carrier left a letter in the hall of the residence of the person to whom it was addressed, and the defendant opened it with intent to pry into the business and secrets of the owner" it was held to be a violation of the provision against taking mail before it reached the addressee, and the principle was laid down that the protection extends until the letters reach their destination by actual delivery to the persons entitled to receive them. *U. S. v. McCready*, 11 Fed. Rep. 225 (1882), citing *U. S. v. Hall*, 98 U. S. 343 (1878).

cancelled stamp or remove the cancellation marks; postal employees, moreover, are prohibited from making false returns to increase their compensation, from unlawfully collecting postage, from failing to account for postage or to cancel stamps, and from issuing a money order without payment.

There are also, as I have indicated, a number of laws denying the use of the mails for the transmission of obscene or libellous writings, lottery tickets and advertisements, fraudulent matter, poisons, intoxicating liquors, explosives and similar articles which come under the ban of the police power. Furthermore, the complexity of political life and more numerous administrative problems in the service, have given rise to a separate class of offences; thus it is criminal for a member of Congress to be interested in a public contract, or a postal employee in a mail contract; or for an employee to make or receive a political contribution. There is, finally, the so-called "newspaper publicity law," the concluding paragraph of which compels, under penalty of a fine, the marking as an advertisement of all reading matter for the publication of which a valuable consideration is received.⁵⁸

Marshall's *dictum* in *McCulloch v. Maryland* has remained unquestioned; it has never been doubted that Congress has the power to punish offences against the mails themselves, or neglect of duty by postal employees. The constitutionality of such legislation has never been attacked; the courts have only been called upon to decide technical points. For example, the word "rob" is used in its common law sense; jeopardy "means a well-grounded apprehension of danger to life, in case of refusal or resistance"; pistols are dangerous weapons within the meaning of the law; and "all persons present at the commission of a crime, consenting thereto, aiding, assisting, or abetting therein, or in doing any act which is a constituent of the offence, are principals."⁵⁹ The detention of mail by one employed in

⁵⁸ Act of August 24, 1912; 37 Stat. L. 554. See below, pp. 121, 164.

⁵⁹ *U. S. v. Wilson*, 1 Baldwin (U. S. C. C.), 78 (1830).

the postoffice, refers to a letter or packet before it reaches its destination; the taking must be clandestine and the intent criminal.⁶⁰ An indictment for advising a carrier to rob the mail must aver that the offence has been committed;⁶¹ a sword in the hand, although not drawn, is a dangerous weapon; a pistol is presumed to be charged.⁶² These are some of the questions that the courts have been called upon to determine.

Nor has there been any dispute as to the power of Congress to establish a monopoly by forbidding private postal enterprises.⁶³ As was pointed out in an early case, "No government has ever organized a system of posts without securing to itself, to some extent, a monopoly of the carriage of letters and mailable packets. The policy of such an exclusive system is a subject of legislative, not of judicial inquiry. But the monopoly of the government is an optional, not an essential part of its postal system. The mere existence of a postal department of the government is not an establishment of the monopoly."⁶⁴ Thus questions have arisen as to the extent and scope of the original provision and the amendments that have been made to it.

⁶⁰ U. S. v. Pearce, 2 McLean's C. C. R. 14 (1839).

⁶¹ U. S. v. Mills, 7 Peters, 138 (1833).

⁶² U. S. v. Wood, 3 Wash. C. C. R. 440 (1818). See also U. S. v. Hardyman, 13 Peters, 176 (1839).

⁶³ U. S. v. Thompson, 28 Fed. Cas. 97 (1846). But see "The Postoffice Monopoly," 11 Law Reporter, 384 (January, 1849). In this paper the writer argues that the idea of a monopoly is not incidental to the postal grant and that the framers did not intend to make the postoffice a source of general revenue. The Constitution enumerates methods of raising funds and *Expressio unius, exclusio alterius*. Mr. Paterson's plan as proposed to the Convention named the postoffice as a source of revenue, but his language was rejected. May the same, asks this writer, be said of his theory? (p. 396). And if the federal government has no such power it has no right of espionage and it may not say of what "mailable matter" consists (p. 397).

⁶⁴ U. S. v. Kochersperger, 26 Fed. Cas. 803 (1860). "In a royal grant of the office of postmaster to foreign parts (July 19, 1632, XIX Rymer's Foedera, 385) the monopoly is justified by the consideration 'how much it imports to the state of the King and this realm that the secrets thereof be not disclosed to foreign nations, which cannot be prevented if a promiscuous use of transmitting or taking up of foreign letters and packets should be suffered.'" Freund, Police Power, p. 688, n.

In 1834, for example, New Orleans citizens complained of slow mails, and proposed a plan of forming a private association for a daily express line to New York. But the project being referred to Chancellor Kent for his opinion, he advised that "the objects of the association cannot be carried into effect, in the way proposed, without violating the post-office law."⁶⁵ In 1844 the Attorney General gave an opinion that letters carried over mail routes by private carriers could not be charged with postage, nor could the letters be detained; the only available course was "to enforce the penalties to which all unauthorized carriers of letters on the mail routes are by law subjected."⁶⁶

As for the general interpretation of the statute, a federal circuit court, in holding that it was not unlawful to carry an unstamped letter of advice concerning money shipped by express, said: "These provisions of the postoffice law, being in derogation of common right, must be construed strictly, and in the absence of clear and explicit language, forbidding the carriage of a letter, under the circumstances indicated, we must hold that the right to do so is not interfered with."⁶⁷ The Supreme Court of the United States, however, had previously declared that the act was undoubtedly a revenue law,⁶⁸ although "not drawn with all the precision and explicitness desirable in penal legislation." And the rule of interpretation as laid down by the Department of Justice was that the acts "are not subjected to the narrow rules formerly applied in the construction of penal statutes. . . . In our courts, such acts receive the same construction that

⁶⁵ Act of March 2, 1827; 4 Stat. L. 238; Niles' Register, vol. xlvii, p. 120. Until 1827 newspapers could be carried privately, but by the act of this year an express exception hitherto existing was omitted. At the present time, of course, they may be carried outside of the mail. See Postal Laws and Regulations of 1913, p. 605.

⁶⁶ 4 Opinions of the Attorneys General, 349 (1844). If a passenger takes the letters without the knowledge of the carrier, the latter is not liable and no penalty is incurred by the person sending the letters; but if the practice is known by public advertisement the carrier will be liable and also the person employing agents to carry his mail. U. S. v. Hall, 26 Fed. Cas. 75 (1844).

⁶⁷ U. S. v. U. S. Express Co., 5 Biss. 91 (1869).

⁶⁸ U. S. v. Bromley, 12 How. 88 (1851). See also 4 Ops. 159 (1843).

would be put upon any other remedial legislation; that is, a fair, sensible, practical interpretation, without reference to any merely technical rule in favor of the accused."⁶⁹

The question arose in 1858 as to the legality of carrying letters to and from the postoffice in a town where a public carrier had not been appointed. The attorney general was of the opinion that the act forbade this. "A person," he said, "who intends to make the carrying of letters his regular business, or part of his business, and to do it periodically for hire, in opposition to the public carrier, is legally incapable of receiving authority to take letters out of the postoffice for that purpose."⁷⁰ But when the question went to the courts, a contrary position was taken. The Act of March 3, 1851⁷¹ authorized the postmaster general "to establish postroutes within the cities or towns." The court held that the word "postroutes" was not synonymous with "postroads" used in that portion of the act of 1827 which made criminal attempts to compete with the federal government in carrying the mail. Hence private letter carriers violated no law. This decision,⁷² however, was overruled when Congress extended⁷³ the provisions of the Act of 1827 to all postroutes already, or thereafter established, and in 1872⁷⁴ declared letter carrier routes within cities "postroads."⁷⁵

⁶⁹ 4 Ops. 162. "By the now settled doctrine of this court" revenue statutes are "not to be construed like penal laws generally, strictly in favor of the defendant; but they are to be fairly and reasonably construed, so as to carry out the intention of the legislature." U. S. v. Stowell, 133 U. S. 1 (1890).

⁷⁰ 9 Ops. 161 (1858); but see U. S. v. Kochersperger, above.

⁷¹ 9 Stat. L. 591.

⁷² U. S. v. Kochersperger, above. While resting its decision on a literal interpretation of the statute, the court intimated that the public streets of a municipality were different from highways, and expressed doubt as to whether they could "be established by Congress as postroads for any other purpose than the carriage of the mail." See below, p. 151.

⁷³ Act of March 2, 1861; 12 Stat. L. 205.

⁷⁴ Act of June 8, 1872; 17 Stat. L. 309.

⁷⁵ Blackham v. Gresham, 16 Fed. Rep. 609 (1883). In 1872, citizens of Davenport, Iowa, were permitted to employ a private dispatch company to deliver within the city limits mail upon which no U. S. postage had been paid; this was allowed because the streets of the city had not been made postroutes. 14 Ops. 152.

Thus when an express company had a number of messengers to collect letters daily from certain customers who paid with private stamps, previously sold, the letters being taken to an office, sorted, and dispatched to the addressees, the court held that these deliveries could not be deemed "by messenger employed for the particular occasion only," but were deliveries "by regular trips and at stated periods," and the defendant was therefore liable.⁷⁶

There has always been the exception that the carrier is permitted to transport, otherwise than in the mail, letters or packets relating "to some part of the cargo of such steamboat or other vessel, *to the current business of the carrier*, or to some article" carried at the same time." Under this inhibition it is not lawful for a railroad company to carry letters from one connecting line to another line, when the letters relate to through business. The letters must be sent by, or addressed to, the carrying company.⁷⁸ But in 1912 Attorney General Wickersham decided that a railroad might carry over its lines, not in the mail, letters written by the secretary of a relief association (which was composed of the employees of the railroad) to the railroad company, but not letters from the officers of the association to its members.⁷⁹

In 1915 the Supreme Court was called upon to construe the statute and held within the "current business" exception "letters of a telegraph superintendent, jointly appointed and paid by a railway company, and a telegraph company, which were written to a railway station agent and telegraph operator with the purpose of promoting the efficient and successful operation of the telegraph business in the success of which the railway company, under the contract with the telegraph company, has a financial interest." The Court refused, however, to consider whether the statute is "penal

⁷⁶ U. S. v. Easson, 18 Fed. Rep. 590 (1883).

⁷⁷ Rev. Stat. Sec. 3985; the italicised words were added by the Act of March 4, 1909; 35 Stat. L. 1124. See 21 Ops. 394 (1896); 28 Ops. 537 (1910), and 42 Cong. Rec., 973 ff.

⁷⁸ 21 Ops. 394.

⁷⁹ 29 Ops. 418 (1912).

or remedial, or whether it is to have a strict or a liberal interpretation."⁸⁰

Another class of offences has arisen out of the section providing punishment for "whoever shall knowingly and wilfully obstruct or retard the passage of the mail," or any conveyance by which it is being carried. Wide extension of federal authority and effective federal supremacy have been enforced under this provision, it having been held that a defendant toll gate keeper cannot plead the justification of a state law for stopping a carrier of the mail.⁸¹ It has been decided, also, that mail matter in the postoffice, ready for delivery, is "obstructed" within the meaning of the statute by an unprovoked assault on the postmaster. "The law presumes that the defendant intended by his act the result which followed and the offense is complete." An act, if unlawful, resulting in an obstruction, is *per se* done knowingly and wilfully.⁸²

Preventing a mail train from running as made up, even though one is willing that the mail car shall go on, is an obstruction within the meaning of the statute,⁸³ and where the regular passenger trains of a railroad company have been selected as the ones to carry the mail, the failure of the railroad to run other trains for that purpose is not necessarily unlawful.⁸⁴ It is no defense, however, that the obstruction was effected merely by leaving the employment,

⁸⁰ U. S. v. Erie R. Co., 235 U. S. 513 (1915). It was held that the setting up of a post by a railroad car or steamboat was not within the act of 1827. "Since the passing of the postoffice laws new modes of conveyance have been established and a condition of things arisen not then known or contemplated. And the question is, whether new acts in contravention of the general spirit and policy of the laws, can be brought within any of its prohibitions, and subjected to a specific penalty. However willing the court might be to attain that end, it cannot strain or force the language used beyond its fair and usual meaning." U. S. v. Kimball, 26 Fed. Cas. 782 (1844).

⁸¹ U. S. v. Sears, 55 Fed. Rep. 268 (1893).

⁸² U. S. v. Claypool, 14 Fed. Rep. 127 (1882).

⁸³ U. S. v. Clark, 25 Fed. Cas. 443 (1877); see also In Re Grand Jury, 62 Fed. Rep. 840 (1894).

⁸⁴ In Re Grand Jury, 62 Fed. Rep. 834 (1894).

“where the motive of quitting was to retard the mails, and had nothing to do with the terms of employment.”⁸⁵

These doctrines were given their widest scope in the Debs cases. It was held that an indictment for obstructing the mails need not set out that the act was done feloniously, since the crime was not a felony at the common law; nor, furthermore, is it necessary to show knowledge that the mails would be interfered with. “The laws make all railways postroutes of the United States,” said the court, “and it is within the range of everyone’s knowledge that a large proportion of the passenger trains on these roads carry the mails.” Finally where the indictment is for conspiracy to obstruct the mails, and overt acts in pursuance thereof, “it is not restricted to a single overt act, since the gist of the offense is conspiracy, which is a single offense.”⁸⁶

The authority of Congress may, moreover, be enforced otherwise than by prosecution for violations of this provision. “The entire strength of the nation,” said the Supreme Court, “may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care. The strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises the army of the Nation, and all its militia, are at the service of the Nation to compel obedience to its laws.” And the Supreme Court went on to declare that “it is equally within its [the federal government’s] competency to appeal to the civil courts for an inquiry and determination as to the existence and character of any alleged obstructions, and if such are found to exist, or threaten to occur, to invoke the powers of those courts to remove or restrain such obstructions; that the jurisdiction of the courts to interfere in such matters by injunction is one recognized from ancient times and by indubitable authority; . . . that the proceeding by

⁸⁵ *Thomas v. Cincinnati, etc., Ry. Co.*, 62 Fed. Rep. 803 (1894); but see *U. S. v. Stevens*, 27 Fed. Cas. 1312 (1877).

⁸⁶ *U. S. v. Debs*, 65 Fed. Rep. 210 (1895).

injunction is of a civil character and may be enforced by proceedings in contempt; that such proceedings are not in execution of the criminal laws of the land; that the penalty for a violation of the injunction is no substitute for and no defence to a prosecution for any criminal offences committed in the course of such violation."⁸⁷

When we turn, however, to the power of Congress to exclude from the mails, a different problem is presented. As has been pointed out, early in the history of the postoffice, mail matter was classified according to its character and different rates of postage were charged. In 1799 the Postmaster General sent a letter to Congress complaining of "large and inconvenient packages" and the Act of 1810 provided that "no postmaster shall be obliged to receive, to be conveyed by mail, any packet which shall weigh more than three pounds."⁸⁸ Congress, therefore, very early exercised the right of determining what articles should be mailable and the conditions upon which they should be carried.

These exclusions were made to protect the mails. Objection was made to the "inconvenient packages" on the ground that the transit was retarded and smaller articles were injured. Such restrictions have been maintained, the post-office regulations now prescribing the limits, both of weight and size. Congress has, moreover, on the same ground, conditionally excluded a variety of articles, such as poisons, explosives, inflammable materials, infernal machines, disease germs, and all compositions liable to hurt anyone or injure the mails. It is provided, however, that the postmaster general "may permit the transmission in the mails under such rules and regulations as he shall prescribe as to preparation and packing" of any of these articles, "not outwardly or of their own force dangerous or injurious to life, health and property." Intoxicating liquors are absolutely excluded. Any violations of the statutory

⁸⁷ In *Re Debs*, 158 U. S. 564 (1895). See also Fairlie, *National Administration*, p. 38; Cleveland, *The Government in the Chicago Strike*, *passim*, and 23 McClure's Magazine, p. 227.

⁸⁸ 2 Stat. L. 592.

provisions or of regulations made by the postmaster general in pursuance of the authority given him, are punishable by fine and imprisonment.⁸⁹

The absolute exclusion of intoxicants, however, cannot be justified upon the same principles as the conditional exclusions, since the danger to the mails can only arise from the fact that they are liquids. This distinction leads naturally to another class of articles which are denied postal facilities on account of the effect they will have on recipients. In this class is all printed or written matter which is obscene, libellous and indecent, or which relates to lotteries and fraudulent schemes.⁹⁰

The first inhibition was made by Congress in the Act of March 3, 1865, and by the Act of June 8, 1872, codifying previous laws and organizing the postoffice on its present basis, the use of the mails was denied to obscene matter, cards "upon which scurrilous epithets may have been written or printed, or disloyal devices printed or engraved" and "letters or circulars concerning illegal lotteries."⁹¹ It has since been made criminal to take obscene or scurrilous matter from the mails for purposes of circulation.⁹²

Before the Supreme Court of the United States, the power of Congress to exclude obscene and indecent matter from the mails⁹³ has never been seriously questioned, and the points presented for determination, largely to the lower federal courts, have not been as to the constitutional author-

⁸⁹ 35 Stat. L. 1131. See Postal Laws and Regulations of 1913, p. 255.

⁹⁰ Publications which violate copyrights granted by the United States cannot be mailed. In this case the postal power is used to make more effectual legislation which it was competent for Congress to enact. See Postal Laws and Regulations of 1913, p. 264.

⁹¹ 13 Stat. L. 507; 17 Stat. L. 283, 302.

⁹² Postal Laws and Regulations of 1913, p. 264.

⁹³ As to when one, who does not personally mail non-mailable matter, may be regarded as causing it to be deposited in the mails, see *Demolli v. U. S.*, 144 Fed. Rep. 363 (1906); 6 L. R. A. n. s. 424, and note. Importation into the United States of obscene matter or articles of an immoral nature was forbidden by the act of March 2, 1857, 11 Stat. L. 168.

ity of Congress.⁹⁴ In 1890, the Supreme Court held that under the Act of July 12, 1876 it was not an offence to deposit in the mails an obscene letter, enclosed in an envelope, and refused to consider the amendment made in 1888 which had extended the inhibition to sealed matter, closed to inspection.⁹⁵ But in 1895, the Court determined that while the possession of obscene pictures is not forbidden, it is an offence to deposit in the mails a letter, not in itself objectionable, but conveying information as to where, and of whom, such pictures could be obtained.⁹⁶ And the next year the Court refused to accept the defence that the obscene matter was mailed in reply to decoy letters by a government detective.⁹⁷

It was held, moreover, that "the words 'obscene,' 'lewd' and 'lascivious,' as used in the statute, signify that form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel. As the statute is highly penal, it should not be held to embrace language unless it is fairly within its letter and spirit."⁹⁸ The penal code of

⁹⁴ "For more than thirty years, not only has the transmission of obscene matter been prohibited, but it has been made a crime, punishable by fine or imprisonment, for a person to deposit such matter in the mails. The constitutionality of this law, we believe, has never been attacked." *Public Clearing House v. Coyne*, 194 U. S. 497 (1904), but see *Dunlop v. U. S.*, 165 U. S. 486 (1897), and *U. S. v. Popper*, 98 Fed. Rep. 423 (1899).

⁹⁵ *U. S. v. Chase*, 135 U. S. 255 (1890). The statute applied to any "book, pamphlet, picture, writing, print, or other publication" of an obscene character. R. S. sec. 3893. The prosecution in the Chase case arose before the act of September 26, 1888, which the Court refused to consider, and which extended the inhibition to sealed letters. 25 Stat. L. 496.

⁹⁶ *Grimm v. U. S.*, 156 U. S. 604 (1895). The Chase case was followed by *U. S. v. Wilson*, 58 Fed. Rep. 768 (1893), which held that even under the act of 1888 "or other publication" were qualifying words which excluded letters, and by *U. S. v. Warner*, 59 Fed. Rep. 355 (1894); *contra*, *U. S. v. Nathan*, 61 Fed. Rep. 936 (1894), and *U. S. v. Ling*, 61 Fed. Rep. 1001 (1894). All doubt was removed by *Grimm v. U. S.*

⁹⁷ *Andrews v. U. S.*, 162 U. S. 420 (1896).

⁹⁸ *Swearingen v. U. S.*, 161 U. S. 446 (1896), Justices Harlan, Gray, Brown and White dissenting, followed in *U. S. v. Moore*, 104 Fed. Rep. 78 (1900); *U. S. v. O'Donnell*, 165 Fed. Rep. 218 (1908); *U. S. v. Benedict*, 165 Fed. Rep. 221 (1908), and *Knowles v. U. S.*, 170 Fed. Rep. 409 (1909).

1909 extended the language to exclude "every filthy" book, pamphlet, picture or letter, and this in effect overruled the Swearingen case.⁹⁹

There have been questions, also, as to the requirements for a valid indictment, which, it has been held, need not set out the objectionable matter, but must inform the accused of the nature of the charge against him.¹⁰⁰ The courts have varied as to whether the test of obscenity is that laid down by Lord Cockburn: Is the tendency of the matter "to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort would fall"?¹⁰¹ or the dictionary meaning as "offensive to chastity, decency or delicacy." The question as to what is obscene, however, is for the jury to determine.¹⁰²

Congress has also denied postal facilities to "all matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal card upon which any delineations, epithets, terms, or language of an indecent, lewd . . . libelous, scurrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, may be written or printed or otherwise impressed or apparent." This prohibition has been extended to include a postal card demanding the payment of a debt and stating that "if it is not paid at once we shall place the same with our lawyer for collection."¹⁰³

It has been held, however, that "outside cover or wrapper" does not include the outside sheet of a newspaper

⁹⁹ U. S. v. Dempsey, 185 Fed. Rep. 450 (1911). See also, "Exclusion of Certain Publications from the Mails," Hearing before Committee on the Postoffice and Postroads, House of Representatives, February 1, 1915, p. 6. But the postmaster general in his Annual Report of 1914, p. 47, appears to think that the Swearingen case is still controlling.

¹⁰⁰ Rosen v. U. S., 161 U. S. 29 (1896).

¹⁰¹ Reg. v. Hicklin, L. R. 3, Q. B. 360 (1868).

¹⁰² Knowles v. U. S., 170 Fed. Rep. 409 (1909); U. S. v. Bennett, 16 Blatch. 343 (1879), and U. S. v. Kennerley, 209 Fed. Rep. 119 (1913).

¹⁰³ U. S. v. Boyle, 40 Fed. Rep. 664 (1889).

and thus the postal authorities are unable to exclude periodical publications on the ground that they contain scurrilous or defamatory matter.¹⁰⁴ From time to time bills have been introduced in Congress to authorize the postmaster general to exclude from the second-class privilege publications, as such, single issues of which are found to contain such non-mailable matter; but no favorable action has ever been taken by Congress on any of these bills. An effort has also been made to deny all postal facilities in such cases.¹⁰⁵

Vigorous objection has been made to the validity of laws excluding obscene matter, but the arguments have in no case any authoritative sponsorship. One writer, for example, urges that "under the pretext of regulating the mails," Congress controls "the psycho-sexual condition of the postal patrons." "The statute," he goes on to say, "furnishes no standard or test by which to differentiate what book is obscene from that which is not."¹⁰⁶ Such a contention, so far as it is one of *constitutional weakness* in Congress is plainly invalid. Immoral libels are an offence at the common law, "not because it is either the duty or province of the law to promote religion or morality by any direct means or punishments, but because the line which must be drawn is between what is and is not the average tone of morality

¹⁰⁴ Postmaster General Blair in 1861 excluded from the mails twelve treasonable publications, "of which several had been previously presented by the grand jury as incendiary and hostile to constitutional authority." Report of the Postmaster General, 1861, p. 584. In 1914 the postmaster at Greenville, Pa., threw out of the mail several thousand cards containing facsimile appeals over his signature by Colonel Roosevelt, calling upon all good citizens to oppose Senator Boies Penrose. The local postmaster held the cards to be defamatory, but his decision was reversed by the authorities at Washington. See N. Y. Sun, October 31, 1914.

¹⁰⁵ See below, p. 158 ff.

¹⁰⁶ Schroeder, Free Press Anthology, p. 171. See also his "Obscene" Literature and Constitutional Law. In The Unanswered Argument against the Constitutionality of the so-called Comstock Postal Laws, and for the Inviolability and Free and Equal Use of the United States Mail, T. B. Wakeman argues that Congress has no legislative power over the subject, and that "the power to suppress obscenity and indecency, together with all other crimes or offenses is one of the general powers reserved in the United States Constitution to the people and the states," p. 30.

which each person is entitled to expect at the hands of his neighbor as the basis of their mutual dealings."¹⁰⁷ The standard to determine what is obscene is the same as that which has prevailed at the common law.

The right of individuals to use the mails is not an absolute one; the legislative department of the government may impose reasonable restrictions on its exercise. It may say that a public convenience is not to be used to injure the morals of the citizens and may exclude such injurious matter, not with the view of making immorality criminal, but simply in order that the circulation may not be encouraged by the government. And to make this denial of facilities effective, Congress may punish violations. The grant of the postal power (to borrow the language used by the Supreme Court in a commerce case) "is complete in itself," and "Congress, as an incident to it, may adopt not only means necessary but convenient to its exercise, and the means may have the quality of police regulations." The right to use the mails is "given for beneficial exercise," and may be denied when it "is attempted to be perverted to and justify baneful existence."¹⁰⁸

With regard to lotteries, however, the case is not so clear. The law declared that "no letter or circular concerning [illegal] lotteries, so-called gift concerts, or other similar enterprises, offering prizes, or concerning schemes devised and intended to deceive and defraud the public, for the purpose of obtaining money under false pretenses, shall be carried in the mail," and made violation criminal.¹⁰⁹ In 1876 the word "illegal" was stricken out, so that letters or circulars concerning all lotteries were prohibited,¹¹⁰ and in 1890 the law was further amended so as to include lottery advertisements in newspapers and to permit postmasters to withhold suspected mail.¹¹¹ Trial of offenders may take

¹⁰⁷ Patterson, *Liberty of the Press, and Public Worship*, p. 69.

¹⁰⁸ *Hoke v. U. S.*, 227 U. S. 308 (1913). See "Is Congress a Conservator of the Public Morals?", 38 *American Law Review*, 194.

¹⁰⁹ R. S. sec. 3894.

¹¹⁰ 19 Stat. L. 90.

¹¹¹ 26 Stat. L. 465; see also 16 Ops. 5 (1878).

place either in the district where the letter was mailed, or that to which it was addressed.¹¹²

The Senate Committee in charge of the amendments proposed in 1890, reported the bill to be based "on the conceded power of the government to determine what character of matter may be sent through the mails; and its purpose is to protect the general welfare and morality of the people against the pernicious effects of lotteries."¹¹³ For authority the committee relied upon the case of *Phalen v. Virginia*, in which the Supreme Court said:

"The suppression of nuisances injurious to public health or morality is among the most important duties of government. Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community: it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and simple." At common law, the committee argued, the king could not sanction a nuisance; by parity of reasoning a nuisance may be denied governmental encouragement.¹¹⁴

All of the anti-lottery legislation, enacted by Congress, has been sustained by the Supreme Court of the United States, although, I think, the reasoning might well have been more cogent. In the first case arising under the earlier legislation, the Court declared:

"The validity of legislation prescribing what should be carried, and its weight and form and the charges to which it should be subjected, has never been questioned. . . . The power possessed by Congress embraces the regulation of

¹¹² R. S. sec. 731, and *Palliser v. U. S.*, 136 U. S. 257 (1890). This was a case where a letter was mailed in New York and addressed to a postmaster in Connecticut to induce him to violate his official duty. The District Court for the district of Connecticut was declared to have jurisdiction.

¹¹³ 51st Cong., 1st Sess., Sen. Rep. No. 1579; see also House Rep. No. 2844.

¹¹⁴ 8 Howard, 164 (1850).

the entire postal system of the country. The right to designate what shall be carried necessarily involves the right to determine what shall be excluded."¹¹⁵ And in a later case, under the act of 1890, the freedom of the press also being at issue, the Court said :

"The states before the Union was formed could establish postoffices and postroads and in doing so could bring into play the police power in the protection of their citizens from the use of the means so provided for purposes supposed to exert a demoralizing influence upon the people. When the power to establish postoffices and postroads was surrendered to the Congress it was as a complete power, and the grant carried with it the right to exercise all the powers which made that power effective. It is not necessary that Congress should have the power to deal with crime and immorality within the states in order to maintain that it possesses the power to forbid the use of the mails in aid of the perpetration of crime and immorality."¹¹⁶

Counsel for the petitioners in this case urged with considerable force that there was a valid distinction between obscene or indecent matter and lottery tickets and advertisements, but to this the Court replied :

"The argument that there is a distinction between *mala prohibita* and *mala in se*, and that Congress might forbid the use of the mails in promotion of such acts as are universally regarded as *mala in se*, including all such crimes as murder, arson, burglary, etc., and the offence of circulating obscene books and papers, but cannot do so in respect of other matters which it might regard as criminal or immoral, but which it has no power itself to prohibit, involves a concession which is fatal to the contention of the petitioners, since it would be for Congress to determine what are within and what are without the rule ; but we think there is no room for such a distinction here, and that it must be left to Congress in the exercise of a sound discretion to determine in

¹¹⁵ Ex parte Jackson, 96 U. S. 727 (1878).

¹¹⁶ In Re Rapier, 143 U. S. 110 (1892).

what manner it will exercise the power which it undoubtedly possesses."

Special exception is taken by Mr. Hannis Taylor to the doctrines of the *Rapier* case. He says: "The act against the circulation of immoral literature, which was not drawn in a paroxysm of excitement, exhausts the entire constitutional authority over the intellectual contents of documents passing through the mails that Congress can exercise." And referring to the exclusion of lottery tickets and advertisements: "This new born heresy—created to meet a special emergency—will be utterly repudiated by the American people the moment when the despotic and irresponsible power over opinion with which the fiat of the Supreme Court has armed Congress, is applied, as it surely will be, to some subject which will arouse and quicken the public conscience."¹¹⁷

As yet, however, there has been manifested no disposition to repeal any of the lottery legislation. Congress has, in fact, made further exclusions, with slight popular protest. The act of July 31, 1912, excludes from interstate commerce, from the mails, and from importation into the United States, "any film or other pictorial representation or encounter of pugilists, under whatever name, which is designed to be used or may be used for purposes of public exhibition."¹¹⁸ This, probably, is the most advanced action yet taken by Congress.

It should be noticed, however, in concluding this review, that all articles which Congress has thus far excluded from the mails have been inherently different from the articles which may be transmitted, in that they may have a harmful effect on other mail or on recipients. Explosives, liquids, infernal machines, intoxicating liquors,—all are in their nature dangerous to the mail or to the addressees. Obscene literature and lottery tickets are proper subjects for denuncia-

¹¹⁷ "A Blow at the Freedom of the Press," in 155 *North American Review*, p. 694.

¹¹⁸ Act of July 31, 1912; 37 Stat. L. 240. But see *Keller v. U. S.*, 213 U. S. 138 (1908).

tion by the government and Congress may attempt to minimize their evil by denying them postal facilities. It may be said, therefore, that all prohibitory legislation has had the character of police regulations; each exclusion, when assailed, has been justified on the facts of the particular case, and the Supreme Court has never gone so far as has a lower federal tribunal in declaring that, "Congress has exclusive jurisdiction over the mails and may prohibit the use of the mails for the transmission of any article. Any article, of any description, whether harmless or not, may, therefore, be declared contraband in the mail by act of Congress and its deposit there made a crime."¹¹⁹

Fraud Orders.—The denial of postal privileges when they are used to defraud may be justified upon the same grounds as the exclusion of obscene matter and lottery tickets; Congress has authority to make the use of the mails subject to police regulations. But it is provided that "the postmaster general may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery"¹²⁰ or fraudulent scheme, "instruct postmasters at any post-office at which registered letters arrive directed to any such person or company . . . to return all such registered letters to the postmaster at the office at which they were originally mailed, with the word 'Fraudulent' plainly written or stamped upon the outside thereof" and they may be returned to the writers under such regulations as the postmaster general may prescribe. But under this section there is no authority to open any sealed letter.¹²¹

The constitutionality of these provisions has been fully established by the Supreme Court of the United States, which has held that the postal system is not "a necessary part of the civil government in the same sense in which the protection of life, liberty and property, the defense of the

¹¹⁹ U. S. v. Bott, 24 Fed. Cas. 1204 (1873).

¹²⁰ As to what constitutes a lottery see *Eastman v. Armstrong Byrd Music Co.*, 212 Fed. Rep. 662 (1914); 52 L. R. A. n. s. 108, and note.

¹²¹ Postal Laws and Regulations of 1913, p. 267.

government against insurrection, and foreign invasion and the administration of public justice are; but it is a public function, assumed and established by Congress for the general welfare." Thus it was constitutional to exclude such fraudulent matter.

As to other objections, the Court declared that due process of law was not denied when an executive official was given authority to control the disposition of property; "nor do we think the law unconstitutional because the postmaster general may seize and detain all letters, which may include letters of a purely personal or domestic character, and having no connection whatever with the prohibited enterprise." The fact that the postmaster general may not open letters not addressed to himself makes such a provision necessary in order that the law may be effective. Finally, said the Court, "the objection that the postmaster general is authorized by statute to confiscate the money, or the representative of the money, of the addressee, is based upon the hypothesis that the money or other article of value contained in a registered letter becomes the property of the addressee as soon as the letter is deposited in the postoffice." But the postmaster general, in seizing the letter, does not confiscate it, or change title thereto; he merely denies the use of the facilities of the postoffice. It would be proper for Congress to empower the postmaster general, in the first instance, to refuse to receive the letter at all, if its objectionable character is known to him.¹²²

The sole remaining question is therefore as to the conclusiveness of administrative determinations and it appears that in the postoffice cases the courts have exercised their powers of review further than in any others coming up from different executive departments.¹²³ The Supreme Court has summarized the rule as follows: "That where the decision of

¹²² *Public Clearing House v. Coyne*, 194 U. S. 497 (1904).

¹²³ See Brinton, "Some Powers and Problems of the Federal Administrative," *University of Pennsylvania Law Review*, January, 1913, reprinted as 62d Cong., 3d Sess., Sen. Doc. No. 1054. See also *Pierce*, *Federal Usurpation*, p. 335 ff.

questions of fact is committed by Congress to the judgment and discretion of the head of a department, his decision thereon is conclusive; and that even upon mixed questions of law and fact, or of law alone, his action will carry with it a strong presumption of its correctness and the courts will not ordinarily review it, although they may have the power and will occasionally exercise the right of so doing."¹²⁴

But it is necessary that the facts upon which the administrative decision is based be not such that the application of the statute will be a clear mistake of law. Thus, in *American Magnetic School of Healing v. McAnnulty*, the postmaster general in effect made a fraud order depend on his opinion as to the efficacy of the complainant's method of healing by encouraging the proper use of the mind to correct physical ailments. The court ruled that under no construction was there evidence sufficient to show fraud. "To authorize the interference of the postmaster general," said the decision, "the facts stated must, in some aspect, be sufficient to permit him, under the statutes, to make the order."¹²⁵ Or, expressed differently, if it is "legally impossible" under any interpretation of the facts, "to hold that the complaining party was engaged in obtaining money through the mails by false or fraudulent representations," the courts will intervene.¹²⁶ The general rule may, therefore, be stated as follows: Judicial review will be granted only in those cases where it appears that the order is without legal authority; exercise of discretion will not be reviewed unless, upon any construction of the facts, the order is clearly wrong, and even upon questions of law alone, it will carry a strong presumption of correctness.

A number of proposals have been made and bills introduced in Congress to provide for a judicial review of the postmaster general's decisions. Congressman Crumpacker,

¹²⁴ *Bates & Guild Co. v. Payne*, 194 U. S. 106 (1904).

¹²⁵ *American School of Magnetic Healing v. McAnnulty*, 187 U. S. 94 (1902).

¹²⁶ *Missouri Drug Co. v. Wyman*, 129 Fed. Rep. 623 (1904). See also *U. S. ex rel. Reinach v. Cortelyou*, 28 App. D. C. 570 (1906), 12 L. R. A. n. s. 166, and note.

for instance, argued "that in all departments of government there is no instance where substantial rights are taken from a citizen upon confidential reports without a legal right to be heard and to see and examine the evidence that is submitted against him, aside from the fraud order and practice in the postoffice department."¹²⁷ He urged that the law should be changed and a copy of the order served on the concern suspected of fraudulent practices. This order should not become operative for fifteen days, except to the extent of holding the mail undelivered in the postoffice. The aggrieved party could file a bill in the circuit court with a bond of \$500 and a summary trial at law would be held upon the issue, which the court should formulate upon the facts involved. Appeal would lie and pending final action the mail would be held in the postoffice or disposed of by order of the court. Another bill authorized a review after the orders had been issued.

Vigorous objection to such changes in the law was made by the postoffice authorities. A memorandum filed by the assistant attorney general for the department¹²⁸ declared that the prime object of the regulations was to secure summary action. "The value of the law depends upon the promptness with which schemes to defraud may be denied the use of the mails to further the swindle. If action is delayed any considerable time,—as would necessarily be the case in a judicial proceeding,—the scheme will consummate its fraud before the interference occurs." If Mr. Crumpacker's bill became law, the only effectual action would be criminal prosecution, and this is always difficult since the victimized parties live at a distance, and it is hard to get evidence to offer at the trial.

In practice, the memorandum explained, investigations are made by inspectors of cases where fraudulent practices are

¹²⁷ Statement of Hon. E. D. Crumpacker before the House of Representatives Committee on the Judiciary, May 25, 1906, in support of H. R. 16548.

¹²⁸ Memorandum by the Assistant Attorney General for the Post-office Department on Postal "Fraud Order" Law (1906).

alleged, and reports sent to the department. If a *prima facie* case of fraud is established, the person or concern involved is notified and given an opportunity to appear before the assistant attorney general for the postoffice department; after the hearing a report is made to the postmaster general who takes final action. But such a hearing is not required by the statute.¹²⁹

The codification of postal laws presented to Congress in 1908, provided for the creation of a Commission of Postal Appeals, to consist of three members, one of whom must be a lawyer, appointed by the President. One of its duties would be to "pass upon the issuance of fraud orders against persons alleged to be conducting lotteries, gift enterprises, or schemes to defraud." Cases would be submitted by the assistant attorney general upon his being satisfied that the evidence was legally sufficient to justify the order which the Commission would issue or refuse after a hearing; provisional action, however, could be taken, and pending final determination, the mail matter could be held in the post-office.¹³⁰

¹²⁹ "It must also be borne in mind that the idea of the fraud order law is not punitive, but is simply protective. It is to prevent the use of the mails to defraud the public. The theory is that by the stopping of the mail privileges in the initiating stages of the fraud, the consummation of the scheme will be prevented. It would be utterly impossible to fulfill this purpose by a trial in court, for the necessary legal evidence could not generally be obtained until the scheme had run its course." *Ibid.*, p. 6.

¹³⁰ Final Report of the Joint Commission on the Business Method of the Postoffice Department and the Postal Service (December 17, 1908), 60th Cong., 2d Sess., Sen. Rep. No. 701, chap. 4, secs. 90-99.

CHAPTER III

THE POWER OF CONGRESS TO ESTABLISH POSTROADS

Legislative Action.—Apart from the postoffice, problems of road construction and internal improvements, by the necessities of development, almost immediately confronted the new nation, which scanned the delegated powers in the Federal Constitution, and not finding any specific authorization of congressional action, asserted the right upon several clauses, among them being the one to establish postroads. By 1793 there were only one hundred and ninety-five post-offices throughout the country¹ and communication was in a deplorable condition, what roads there were being little more than paths and quite impassable for wheeled vehicles. Yet communication was of the utmost importance, and especially was this true in respect to the West, it being thought that commercial and political development, if not actual retention, was impossible without easier means of access. Some road construction had been accomplished by private initiative with state aid, but the problem was not really attacked, and when in 1792 Congress established a postroute between Richmond, Va., and Danville, Ky., and later one between Philadelphia, Pittsburgh, and Louisville,² the West became jealous of the facilities accorded the East. This feeling was encouraged by the Atlantic States being permitted by Congress to levy tonnage duties in order to effect the improvement of rivers and harbors.³ Appropriations had also been made by Congress for lighthouses, etc., and soon the demands of the Western States were too strong to be resisted. In 1806 Congress was forced to take definite action.⁴

¹ American State Papers, vol. xv (Postoffice), p. 28.

² 1 Stat. L. 233.

³ Lalor, *Encyclopaedia of Political Science*, vol. ii, p. 556.

⁴ 1 Stat. L. 251.

The constitutional problem, however, had for some time engaged the attention of the leading statesmen; all admitted the necessity for federal aid, but the power of Congress was seriously questioned. In his first annual address Washington urged the encouragement of "intercourse between the distant parts of our country by a due attention to the postoffice and postroads,"⁵ and repeated this recommendation in later addresses.⁶ Chief Justice Jay had in 1790 given Washington his opinion, certainly entitled to great weight, that "the Congress have power to establish postroads. This would be nugatory unless it implied a power to repair these roads themselves, or compel others to do it. The former seems to be the more natural construction. Possibly the turnpike plan might gradually and usefully be introduced."⁷

But there were also many who held to a stricter construction of the Constitution. Jefferson was doubtful. Writing to Madison in 1796 he asked: "Does the power to *establish* postroads given you by Congress, mean that you shall *make* the roads, or only *select* from those already made those on which there shall be a post?" The one construction would give Congress enormous powers; the other, if inadequate, could be referred to the states for action.⁸

The question of federal power was first definitely raised in 1806 when the demands of the Western States became irresistible and Congress began the construction of the Cumberland Road, the famous highway which was to figure in the economic and political history of the United States for the next half century, and to arouse acute discussion as to the meaning of the postal clause.⁹ Ohio was admitted as

⁵ Richardson, vol. i, p. 66.

⁶ *Ibid.*, pp. 83, 107.

⁷ Correspondence and Public Papers of John Jay (Ed. Johnston), vol. iii, p. 407.

⁸ Jefferson, Writings (Ed. Ford), vol. vii, p. 63.

⁹ In the discussion of this undertaking and its relation to the post-office clause of the Constitution, I have derived much assistance from Professor J. S. Young's "A Political and Constitutional Study of the Cumberland Road" (University of Chicago Press, 1904), although this only incidentally considers the inquiry which my essay attempts.

a state in 1802 and the opportunity was seized to make a mutually advantageous arrangement by which the United States would retain the same rights as to the public domain which it possessed while Ohio was yet a territory (control of lands as yet unpaid-for and suspension of state taxes), and on the other hand, as a *quid pro quo*, a percentage of the proceeds derived from the sale of certain of the lands, should be applied to defray the cost of road construction under the auspices of the general government. Such an arrangement was first proposed by Gallatin¹⁰ who urged "that one tenth part of the net proceeds of the lands hereafter sold by Congress shall, after deducting all expenses incident to the same, be applied towards laying out and making turnpike roads . . . under the authority of Congress, with the consent of the several states through which the same shall pass."¹¹

The next action came three years later when Congress authorized the President to appoint a commission to lay out the road;¹² consent to the construction had already been given by the legislatures of Maryland and Virginia, but not by that of Pennsylvania.¹³ Maryland's authorization for the improvement of postroads within the state was given in 1803 and contained a limitation to the effect that Congress was not thereby given the power "to cut down or use the timber or other material of any person or persons against his, her, or their consent,"¹⁴—an explicit denial of the right of eminent domain in connection with the postal power.

In January, 1807, Jefferson received the report of the commission appointed to locate the road, but the President withheld either acceptance or disapproval until he should re-

¹⁰ Gallatin, Writings (Ed. Adams), vol. i, p. 76; Letter to William B. Giles, chairman of the House of Representatives Committee for admitting the North Western Territory into the Union.

¹¹ The proposed road fund of 10 per cent., however, was by the act which Congress passed on March 3, 1803, reduced to 5 per cent. with some restrictions as to expenditure within the state. 2 Stat. L. 226.

¹² 2 Stat. L. 357; Act of March 29, 1806.

¹³ Young, The Cumberland Road, 21.

¹⁴ Laws of Maryland, 1802-1804, ch. 115.

ceive "*full consent* to a free choice of route through the whole distance."¹⁵ When Pennsylvania acted, its legislature detailed the powers which the United States might exercise, and stipulated that persons whose property should be taken must be given compensation; but this was sufficient for the "*full consent*" which Jefferson demanded before the undertaking could be begun.

Even with these limitations congressional action as to postroads had not been taken without some doubts as to its constitutionality; yet the demands for federal aid were so great and the responses so meagre that serious objection was not made. In spite of the fact that he had sanctioned appropriations for the improvement of a canal in Louisiana and a road from the Georgia frontier to New Orleans,¹⁶ Jefferson thought that the postal clause did not grant adequate power for the construction of roads by Congress.¹⁷ In his sixth annual message (after the passage of the Cumberland Road bill) he urged that the treasury's surplus should be applied "to the great purposes of the public education, roads, canals, and such other objects of public improvement as it may be thought proper to add to the constitutional enumeration of federal powers," but supposed that a constitutional amendment would be necessary.¹⁸ Two years later the growing surplus led him to return to the same theme. "Shall the revenue be reduced?" he asked. "Or shall it rather be appropriated to the improvement of roads, canals, rivers, education, and other great foundations of prosperity and union, under the powers which Congress may already possess, or such amendment of the Constitution as may be approved by the states. While uncertain of the course of things the time may be advantageously employed

¹⁵ Miscellaneous State Papers, vol. i, p. 474; Young, *The Cumberland Road*, p. 41.

¹⁶ 2 Stat. L. 397, 516.

¹⁷ On August 31, 1806, Jefferson wrote to Gallatin, commenting on the latter's plan for internal improvements, with a word of suggestion as to branches, "if it be lawful and advisable to extend our operations to them." Jefferson, *Writings* (Ed. Ford), vol. viii, p. 466.

¹⁸ Richardson, vol. i, p. 409; Jefferson, vol. viii, p. 494.

in obtaining the powers necessary for a system of improvement should that be thought best."¹⁹

It was not, however, until during Madison's administration that the question was to become an acute one. Under Washington and Adams there had been no appropriations for roads; under Jefferson Congress had given money for the Cumberland Road, for a route from the frontier of Georgia to New Orleans and a canal in Louisiana.²⁰ But under Madison eleven acts were passed by Congress²¹ and these caused an exhaustive and sometimes acrimonious discussion of the constitutional principles involved, with the intervention of the President through admonitory messages and one veto, on the day before he was to give up his office.

Madison's opinion as to whether the Constitution had given Congress the power to undertake the construction of roads seems not to have been absolutely consistent. Writing in *The Federalist*, he had urged as one of the advantages that the adoption of the Constitution would insure the fact that "intercourse throughout the union will be facilitated by new improvements. Roads will everywhere be shortened, and kept in better order; accommodations for travellers will be multiplied and meliorated; . . . The communication between the western and Atlantic districts, and between different parts of each, will be rendered more and more easy by those numerous canals with which the beneficence of nature has intersected our country, and which art finds it so little difficult to connect and complete."²²

On February 5, 1796, in the House, Madison offered a resolution authorizing the President to have made a survey of the postroad from Maine to Georgia, the expense being borne by the United States.²³ Two good effects, said

¹⁹ Richardson, vol. i, p. 456; Jefferson, vol. ix, p. 224.

²⁰ 2 Stat. L. 357, 397.

²¹ A convenient list of these and of later laws is to be found in E. C. Nelson, "Presidential Influence on the Policy of Internal Improvements," Iowa Journal of History and Politics, vol. iv, App. A (p. 53 ff).

²² The Federalist, No. 14.

²³ Annals of 4th Congress, 1st Sess., pp. 297, 314. A bill authorizing the survey passed the House on May 20. Ibid., p. 1415.

Madison, would accrue; "the shortest route from one place to another would be determined upon, and persons, having a certainty of the stability of the roads, would not hesitate to make improvements on them." It was to be the "commencement of an extensive work"; and during his administration Madison approved acts which appropriated over \$500,000, most of it for the Cumberland Road.²⁴

There had been, it is true, an intimation of a changed attitude when, in his seventh annual message (December 5, 1815), although strongly recommending the construction of roads and canals under national authority, he called it "a happy reflection that any defect of constitutional authority which may be encountered can be supplied in a mode which the Constitution itself has providently pointed out."²⁵ A year later he asked Congress to exercise its existing powers, and, if necessary, to resort "to the prescribed mode of enlarging them, in order to effectuate a comprehensive system of roads and canals, such as will have the effect of drawing more closely together every part of our country."²⁶

Madison's decisive stand, however, was to be taken on the so-called "bonus bill," the purpose of which was to provide a permanent fund for road construction. In the famous report which Gallatin had prepared for the Senate (April 6, 1808), he had denied any right of eminent domain inhering in the United States and had declared that no road or canal could be opened without the consent of the states concerned. This fact, Gallatin argued, necessarily controlled the manner of expenditure (in the absence of constitutional amendment). He suggested two expedients: congressional undertakings with the consent of the states, or subscriptions by Congress to the shares of companies incorporated for the purpose of building highways.²⁷ Concerning Gallatin's second alternative, no action was taken for two years. In

²⁴ 2 Stat. L. 555, 661, 668, 670, 730, 829; 3 Stat. L. 206, 282, 315, 318, 377.

²⁵ Richardson, vol. i, p. 567.

²⁶ Richardson, vol. i, p. 576; see Farrand, vol. iii, p. 463.

²⁷ Miscellaneous State Papers, vol. i, p. 741.

1810, however, a Senate committee reported favorably a blanket bill which would make the government owner of one half the stock in any corporation formed to carry out the projects recommended by Gallatin in his report.²⁸ But the theory of the "bonus bill" was radically different.

It was reported in the House by a special committee of which Calhoun was chairman, and set aside the \$1,500,000 bonus which was to be paid by the United States Bank for its charter, together with the dividend arising from the stock held by the government; there would thus be provided a permanent fund for the construction of roads and canals.

The chief argument in support of the bill was made by Calhoun.²⁹ He expressed no opinion as to the validity of the objection that Congress had not the power to cut a road through a state without its consent. The proposed bill did not raise that question. But, said Calhoun, "the Constitution gives to Congress the power to establish postoffices and postroads. I know that the interpretation usually given to these words confines our powers to that of designating only the postroads; but it seems to me that the word 'establish' comprehends something more," it would seem to give Congress the right to construct. Calhoun's argument is not a closely reasoned one and does not carry conviction in all respects; nevertheless, his main point upon which he lays chief weight,—that the appropriation of money by Congress is not confined to the furtherance of those powers enumerated in the Constitution,—was well taken.³⁰

The bill was passed by Congress,³¹ not, however, without many doubts being expressed as to its constitutionality,³² and went to President Madison at the very close of his administration. Madison did not resort to a pocket veto and on March 3, 1817, sent a message to Congress giving the grounds for his objections to the measure. He held that

²⁸ *Annals of 11th Congress*, vol. ii, pp. 1401, 1443.

²⁹ Calhoun, *Works*, vol. ii, p. 193.

³⁰ See below, p. 75.

³¹ *Annals of 14th Congress*, 2d Sess., p. 191.

³² *Ibid.*, pp. 177, 191.

the act could not be justified under the commerce or general welfare clauses, but made no use of the postal power as a possible, if not adequate source of authority. He said:

"If a general power to construct roads and canals, and to improve the navigation of water courses, with the train of powers incident thereto, be not possessed by Congress, the assent of the states in the mode provided in the bill cannot confer the power. The only cases in which the consent and cession of particular states can extend the power of Congress are those specified and provided for in the Constitution."³³

In this message Madison did not clearly suggest a distinction between the simple power to appropriate, to appropriate and construct, with the consent of the states, and to construct against the will of local jurisdictions. Before reaching the conclusion quoted above, he had used this ambiguous language: "A restriction of the power 'to provide for the common defense and general welfare' to cases which are to be provided for by the expenditure of money would still leave within the legislative power of Congress all the great and important measures of government, money being the ordinary and necessary means of carrying them into execution."³⁴ Madison declared later that his veto contemplated the appropriation as well as construction; yet during his tenure he sanctioned measures providing funds for various roads.³⁵

³³ Richardson, vol. i, p. 585; Mason, *The Veto Power*, p. 95. Jefferson wrote in 1817 that the President's veto was on "sound grounds; that instrument not having placed this among the enumerated objects to which they are authorized to apply the public contributions," and called the veto "a fortunate incident." Jefferson, *Writings* (Ed. Ford), vol. x, pp. 81, 91.

³⁴ Richardson, vol. i, p. 585.

³⁵ As late as 1830 Madison wrote: "I observe that the President, in his late veto, has seen in mine of 1817, against internal improvements by Congress, a concurrence in the power to appropriate money for the purpose. Not finding the message which he cites, I can only say that my meaning must have been unfortunately expressed or is very strangely misinterpreted. The veto on my part certainly contemplated the appropriation of money as well as the operative and jurisdictional branches of the power. And, as far as I have reference to the message, it has never been otherwise understood." *Letters and Other Writings of James Madison*, vol. iv, p. 86.

This distinction which Calhoun pointed out, and concerning which, in his message at least, Madison was vague, was to be stressed by Monroe and by Congress in the exhaustive debates upon the nature and extent of the power that the federal government possessed.³⁶ Monroe did not delay in making known his attitude and went directly to the point in his first annual message when he said:

"Disregarding early impressions, I have bestowed on the subject all the deliberation which its great importance and a just sense of my duty required, and the result is, a settled conviction, in my mind, that Congress do not possess the right. . . . In communicating this result, I cannot resist the obligation which I feel, to suggest to Congress the propriety of recommending to the states the adoption of an amendment to the Constitution, which shall give Congress the right in question."³⁷

This portion of President Monroe's message was referred to a special committee in the House of Representatives which reported on December 15, 1817, in an able document.³⁸ The problem, said the committee, involved "a great constitutional question on the one hand," and was "intimately connected on the other, with the improvement, the prosperity, the union, and the happiness of the United States." It was argued, in brief, that Congress had the power: "1. To lay out, improve, and construct postroads through the several states, with the assent of the respective

³⁶ Before his annual message Monroe wrote to Madison: "The question respecting canals and roads is full of difficulty, growing out of what has passed on it. After all the considerations I have given it, I am fixed in the opinion, that the right is not in Congress, and that it would be improper in me, after your negative, to allow them to discuss the subject and bring in a bill for me to sign in the expectation that I would do it. I have therefore decided . . . to recommend the procuring of an amendment from the states, so as to vest the right in Congress." *Writings of James Monroe*, vol. vi, p. 32. Madison replied, approving this course. "*The expediency of vesting in Congress*," he said, "a power as to roads and canals, I have never doubted, and there has never been a moment when such a proposition to the states was so likely to be approved." *Letters . . . of James Madison*, vol. iii, p. 50.

³⁷ Richardson, vol. ii, p. 18.

³⁸ *Annals of 15th Congress*, 1st Sess., vol. i, p. 451.

states. 2. To open, construct, and improve military roads through the several states, with the assent of the respective states. 3. To cut canals through the several states, with their assent. . . . ”

Such powers were not based, it was contended, on a liberal construction of the Constitution, nor were they dangerous in tendency and capable of working an injury to the states, for there was no recognition of a right of eminent domain or of congressional supremacy in respect to jurisdiction. Considering specifically the extent of the postal power the committee said :

“ That Congress, with the assent of the states respectively, may construct and improve their postroads, under the power ‘ to establish postoffices and postroads ’ seems to be manifest both from the nature of things and from analogous constructions of the Constitution. It has been contended, indeed, that the word *establish*, in this clause of the instrument, comprehends nothing more than a mere designation of postroads. But if this be true, the important powers conferred on the general government in relation to the post-office, might be rendered in a great measure inefficient and impracticable. . . . If the power to establish confers only the authority to designate, Congress can have no right either to keep a ferry over a deep and rapid river for the transportation of the mails, or to compel the owners of a ferry to perform that service ; and yet our laws contain an act, acquiesced in for more than twenty years, imposing penalties on ferrymen for detaining the mail and on other persons for retarding or obstructing its passage. It would be difficult to discover how this power of imposing penalties can be supported, either as an original or accessory power except upon principles of more liberal construction than those now advanced. . . .

“ The authority which is conferred by the Constitution to make all laws which shall be ‘ necessary and proper ’ for carrying into execution the enumerated powers, is believed to vest in the general government all the means which are

essential to the complete enjoyment of the privilege of 'establishing postoffices and postroads!' Even without this clause of the Constitution the same principle would have to be applied to its construction, since according to common understanding the grant of a power implies a grant of whatever is necessary to its enjoyment. . . .

"It is indeed from the operation of these words 'necessary and proper' in the clause of the Constitution which grants accessory powers, that the 'assent of the respective states' is conceived a prerequisite to the improvement even of postroads. For, however 'necessary' such improvements might be, it might be questioned how far an interference with the state jurisdiction over its soil, against its will, might be 'proper.' Nor is this instance of an imperfect right in the general government without an analogy in the Constitution; the power of exercising jurisdiction over forts, magazines, arsenals, and dockyards, depending upon previous purchase by the United States with the consent of the states.

"Admitting then, that the Constitution confers only a right of way, and that the rights of soil and jurisdiction remain exclusively with the states respectively, yet there seems to be no sound objection to the improvement of roads with their assent."

In the long debate which followed this report upon the President's message, the opinions expressed veered between ultra-conservative and ultra-liberal positions. A middle ground was taken by Clay, whose speeches are perhaps the best on the subject.³⁹ He was a staunch supporter of the committee's report, contending "that the power to construct postroads is expressly granted in the power to establish postroads." "If it be," he said, "there is an end to the controversy. . . . To show that the power is expressly granted, I might safely appeal to the arguments already used to prove that the word *establish*, in this case, can mean only one thing,—the right of making." According to Clay, "to establish justice" as used in the preamble of the Constitu-

³⁹ Annals of 15th Cong., 1st Sess., vol. ii, p. 1366.

tion, did not compel Congress to adopt the systems then existing. "Establishment means in the preamble, as in other cases, construction, formation, creation."

When it is considered that "under the old Articles of Confederation, Congress had over the subject of postroads as much power as gentlemen allow to the existing government, that it was the general scope and spirit of the new Constitution to enlarge the powers of the general government, and that, in fact, in this very clause, the power to establish postroads is superadded to the power to establish postoffices, which was alone possessed by the former government," the argument on this point is successfully maintained.

Clay contended that "it was certainly no objection to the power that these roads might also be used for other purposes. It was rather a recommendation that other objects, beneficial to the people, might be thus obtained, though not within the words of the Constitution." For an illustration he pointed to the encouragement of manufactures under the power to levy taxes. Postroads could be devoted to "other purposes connected with the good of society."⁴⁰ Construction completed, Clay argued, Congress had a jurisdiction "concurrent with the states, over the road, for the purpose of preserving it, but for no other purpose. In regard to all matters occurring on the road, whether of crime, or contract, etc., or any object of jurisdiction unconnected with the preservation of the road, there remained to the states exclusive jurisdiction."⁴¹

At the conclusion of the debate several resolutions were offered and voted upon, only one receiving a majority. It recited "that Congress have power, under the Constitution, to appropriate money for the construction of postroads, military and other roads, and of canals and for the improve-

⁴⁰ Annals of 15th Cong., 1st Sess., vol. i, p. 1173. On April 27, 1816, Congress appropriated money "for the purpose of repairing and keeping in repair" certain roads under the direction of the Secretary of War. 3 Stat. L. 315. On May 20, 1826, provision was made for the repair of a postroad under the direction of the postmaster general. 4 Stat. L. 190, 154. No mention was made of the consent of the states.

⁴¹ Annals of 15th Congress, 1st Sess., vol. i, p. 1169.

ment of water courses." In this matter Congress sanctioned the distinction between appropriation and construction. Three other resolutions were to the effect that Congress could build, generally, post and military roads; roads and canals necessary "for commerce between the states," and canals for "military purposes." These avowals of power, although they stated slightly different propositions, all intimated that the consent of the states would not be required, since each contained a proviso that private property should not be taken for public use without compensation,—a liberal attitude for this period of constitutional interpretation.⁴² All of the resolutions, save the first, failed of passage by small majorities.

The consideration of Monroe's message in the Senate was very favorable to the President; there was little disposition to criticize him for having announced his views prematurely,—possibly with the intention of warning Congress,—and no attempt was made to ascertain directly the Senate's opinion on the constitutional powers of Congress. Indirectly, however, the Senate asserted its opinion through passing on a proposed amendment to the Constitution which was urged in response to Monroe's intimation that this was the proper method of dealing with the matter.

From time to time several proposed amendments to the Constitution had been introduced, and these, unlike others advocated during "the same period of conflict between the broad and strict constructionists,"⁴³ aimed to increase the powers of Congress, and to take away the taint of usurpation which, at least in the minds of many, was considered as attaching to the road projects either under way or seriously contemplated. Amendments empowering Congress to construct roads and canals with the consent of the states were suggested in 1813 and 1814, and on December 9, 1817, fol-

⁴² *Annals of 15th Cong.*, 1st Sess., vol. ii, p. 1380 ff.

⁴³ Ames, *The Proposed Amendments to the Constitution of the United States during the First Century of its History*, p. 20. (Report of the American Historical Association, 1896.)

lowing the advice of Monroe's message, Senator Barbour introduced in the Senate such a resolution which made state consent necessary and provided that the appropriations should be distributed "in the ratio of representation which each state shall have in the most numerous branch of the national legislature. But the portion of any state may be applied to the purpose aforesaid in any other state." When the resolution was reported, it was indefinitely postponed by a vote of 22 to 9.⁴⁴ This result showed that there was slight chance of passing any general road construction bill over the president's veto, although some of the votes against the resolution were cast on the ground that Congress already had the power.

But the advocates of road construction were not to be denied. In compliance with a resolution, Calhoun, as secretary of war, submitted to the House of Representatives on January 14, 1819, a comprehensive report on roads and canals, the necessity for them, and a scheme for construction. Calhoun, however, "thought it improper under the resolution of the House to discuss the constitutional question."⁴⁵

The report was laid on the table⁴⁶ and although in January, 1822, the House Committee favored surveys for canals from Boston south along the Atlantic coast, and in the middle west, and a road from Washington to New Orleans, nothing became law with the exception of small appropriations for the Cumberland Road.⁴⁷ It was, however, an act for the preservation and repair of this road, passed by the House on April 29, 1822, and returned by the President on May 4, which caused him to follow his veto message with a comprehensive statement of the "Views of the President of the United States on the subject of internal improve-

⁴⁴ Annals of 15th Congress, 1st Sess., vol. i, pp. 211, 292; Ames, p. 260. Martin Van Buren while in the Senate urged a similar amendment (1824-1825) and there were others who proposed like resolutions. Ames, p. 261.

⁴⁵ See above, p. 67.

⁴⁶ Annals of 15th Congress, 2d Sess., pp. 544, 2443.

⁴⁷ 3 Stat. L. 412, 426, 500, 560, 604, 728.

ments,"⁴⁸ the most elaborate constitutional discussion ever sent to the Capitol from the White House.

Monroe was of the opinion that Congress had the right to make appropriations for roads, with the consent of the states through which they were to pass, but that it did not have sovereign and jurisdictional rights to construct roads or to repair and keep them free from obstructions. This doctrine Von Holst calls a "quibble on words," but "it has become an established one that Congress may appropriate money in aid of matters which the federal government is not constitutionally able to administer and regulate," and in this respect, therefore, Monroe was correct.⁴⁹

The advocates of construction and of efficient jurisdiction after the roads had been made, derived the authority of Congress from several clauses in the Constitution, among them the grant "to establish postoffices and postroads." To this clause, Monroe gave an exhaustive treatment.

"What is the just import of these words, and the extent of the grant?" he asked. "The word 'establish' is the ruling term; 'postoffices and postroads' are the subjects, on which it acts. The question, therefore, is, what power is granted by that word? The sense, in which our words are commonly used, is that, in which they are to be understood in all transactions between public bodies and individuals.

⁴⁸ Richardson, vol. ii, p. 142. Monroe's veto was not unexpected. He had sounded a warning in his annual message of 1822 when he said that a power to execute a system of internal improvements, "confined to great national purposes and with proper limitations, would be productive of eminent advantage to our Union," and thus "thought it advisable that an amendment of the Constitution to that effect should be recommended to the several states." *Ibid.*, vol. ii, p. 191.

⁴⁹ Willoughby on the Constitution, 588. As late as 1827 Madison wrote to Monroe concerning the Cumberland Road: "I cannot assign the grounds assumed for it by Congress, or which produced his [Jefferson's] sanction. I suspect that the question of constitutionality was but slightly, if at all, examined by the former, and that the executive consent was doubtingly and hesitatingly given. Having once become a law and being a measure of singular utility, additional appropriations took place of course under the same administration, and with the accumulated impulse thus derived, were continued under the succeeding one, with less critical investigation, perhaps, than was due to the case." Madison, Works, vol. iii, p. 55.

The intention of the parties is to prevail, and there is no better way of ascertaining it, than by giving to the terms used their ordinary import."

Among enlightened citizens, Monroe went on, there would be no difference of opinion; "all of them would answer, that a power was thereby given to Congress to fix on the towns, court-houses, and other places, throughout our Union, at which there should be postoffices; the routes by which the mails should be carried from one postoffice to another, so as to diffuse intelligence as extensively, and to make the institution as useful, as possible; to fix the postage to be paid on every letter and packet thus carried to support the establishment; and to protect the postoffices and mails from robbery, by punishing those, who should commit the offence. The idea of a right to lay off the roads of the United States, on a general scale of improvement; to take the soil from the proprietor by force; to establish turnpikes and tolls, and to punish offenders in the manner stated above, would never occur to any such person. The use of the existing road, by the stage, mail carrier, or postboy, in passing over it, as others do, is all that would be thought of; the jurisdiction and soil remaining to the state, with a right in the state, or those authorized by its legislature, to change the road at pleasure."

This interpretation, the message went on to declare, was supported by the modification of the postal grant in the Articles of Confederation, as it appeared in the Constitution. "Had it been intended to convey a more enlarged power in the Constitution," said Monroe, "than had been granted in the Confederation, surely the same controlling term [establish] would not have been used; or other words would have been added, to show such intention, and to mark the extent, to which the power should be carried. . . . It would be absurd to say, that, by omitting from the Constitution any portion of the phraseology, which was deemed important in the Confederation, the import of that term was enlarged, and with it the powers of the Constitution, in a proportional

degree, beyond what they were in the Confederation. The right to exact postage and to protect the postoffices and mails from robbery, by punishing the offenders, may fairly be considered, as incidents to the grant, since, without it, the object of the grant might be defeated. Whatever is absolutely necessary to the accomplishment of the object of the grant, though not specified, may fairly be considered as included in it. Beyond this the doctrine of incidental power cannot be carried." Monroe then enters upon a consideration of what the colonists and framers of the Constitution understood to be comprehended in the postal power, and concludes:

"If the United States possessed the power contended for under this grant, might they not, in adopting the roads of the individual states for the carriage of the mail, as has been done, assume jurisdiction over them, and preclude a right to interfere with or alter them? Might they not establish turnpikes, and exercise all the other acts of sovereignty, above stated, over such roads, necessary to protect them from injury, and defray the expense of repairing them? Surely, if the right exists, these consequences necessarily followed, as soon as the road was established. The absurdity of such a pretension must be apparent to all, who examine it. In this way, a large portion of the territory of every state might be taken from it; for there is scarcely a road in any state, which will not be used for the transportation of the mail. A new field for legislation and internal government would thus be opened."⁵⁰

⁵⁰ The validity of Monroe's argument is treated below, p. 81. Perhaps it may not be amiss to add that I have not attempted an exhaustive consideration of congressional activity in respect to road construction. This has been done by Nelson, *Presidential Influence on the Policy of Internal Improvements*, and Young, *A Political and Constitutional Study of the Cumberland Road*. There are also excellent and less specialized accounts in Babcock, *The Rise of American Nationality*, ch. xv, Turner, *The Rise of the New West*, ch. xiii (*American Nation*, vols. 13 and 14), and Schouler, *History of the United States*, vol. iii. My sole purpose has been to treat congressional action and presidential opinion from their constitutional aspects in relation to the power to establish postoffices and postroads.

While the President's attitude stopped Congress from actually constructing roads, frequent appropriations were granted to be applied under the direction of the states. Perhaps the most important of these was in the act passed in 1824 to have surveys made of such roads and canals as in the opinion of the President were of value for military, commercial and postal purposes.⁵¹

Conflict over the constitutional problem, and the distinction between appropriation and construction, were, however, abandoned by John Quincy Adams who was a staunch advocate of federal aid,⁵² but the discussion was revived by Jackson, who vetoed six bills,⁵³ the most important of which provided for a government subscription of \$150,000 to purchase stock in the Maysville, Washington, Paris and Lexington Turnpike Company, a Kentucky corporation. The action of the President did not come as a surprise for in his first annual message he had told Congress that the mode of internal improvements, "hitherto adopted, has by many of our fellow citizens been deprecated as an infraction of the constitution, while by others it has been viewed as inexpedient. All feel that it has been employed at the expense of harmony in the legislative councils."⁵⁴

Furthermore, Jackson thoroughly disapproved of the government's becoming a minority stockholder in a semi-private enterprise which would receive profits through the payment of tolls. He held it to be not only "highly expedient, but indispensably necessary, that a previous amendment of the Constitution, delegating the necessary power and defining and restricting its exercise with reference to the sovereignty of the states, should be made."⁵⁵ Otherwise there would be a continuance of congressional uncertainty as to the existence of the power. He considered the general question in

⁵¹ 4 Stat. L. 71; for the list of appropriations, see Nelson, p. 57; see also Lalor, *Cyclopaedia of Political Science* (Internal Improvements), vol. ii, p. 568.

⁵² Richardson, vol. ii, p. 281.

⁵³ Mason, *The Veto Power*, pp. 143, 145.

⁵⁴ Richardson, vol. ii, p. 452.

⁵⁵ *Ibid.*, vol. ii, p. 492.

two aspects: (1) as "to the power of making internal improvements within the limits of a state, with the right of territorial jurisdiction, sufficient at least for their preservation and use" and (2) as to the power of "appropriating money in aid of such works when carried on by a state or by a company in virtue of state authority, surrendering the claim of jurisdiction."⁵⁶ He believed Congress could appropriate directly for *national*, not *local*, purposes; the other power he firmly denied.

After Jackson there were other vetoes of internal improvement bills, but they were based largely upon the distinction between national and local objects. Road construction, moreover, gave way to river and harbor development, and there was little, if any, discussion of the meaning of the postal clause. Congress asserted a broad power over postroads designated by it, and there was little objection; on the few occasions that the matter came before the courts, the power was sustained. In 1862 Congress gave the President authority when in his judgment the public safety required its exercise, to take possession of all railroads and telegraphs and to place their employees under military control, so that the lines would be "considered as a postroad and a part of the military establishment of the United States, subject to all the rules and restrictions imposed by the rules and articles of war."⁵⁷ Any interference with the exercise of this authority was made a crime. Compensation to the railroad and telegraph companies was to be fixed by three commissioners, subject to approval by Congress. This authorization, however, was based upon the war, as well as on the postal power, and when Congress came to charter railroads and bridge companies, it based its right largely on the commerce clause, with the postal and war grants as ancillary sources.⁵⁸

Recent evidences of congressional action, based upon the

⁵⁶ Richardson, vol. iii, p. 119; Bassett, *Life of Andrew Jackson*, vol. ii, pp. 483-495.

⁵⁷ 12 Stat. L. 334.

⁵⁸ See also Act of July 1, 1862; 12 Stat. L. 489.

postroads clause, are to be seen in the good roads movement, and in 1912 Congress appropriated five hundred thousand dollars for "improving the condition of roads to be selected by them [the secretary of agriculture and the postmaster general] over which rural delivery is or may hereafter be established, such improvement to be for the purpose of ascertaining the increase in the territory which could be served by each carrier as a result of such improvement, the possible increase of the number of delivery days in each year," etc. But it is provided that the state in which the improvements are to be made "shall furnish double the amount of money for the improvement of the road or roads so selected."⁵⁹ The results of the scheme have not been very satisfactory,⁶⁰ but proposals are made for other, and more extensive federal undertakings. Finally it is possible, in some measure at least, to base upon the postal power the Act of March 12, 1914, which authorizes "the president of the United States to locate, construct and operate railroads in the Territory of Alaska."⁶¹

Judicial Determinations.—The power of Congress to construct roads and canals did not, in the early days of its assertion and denial, come before the Supreme Court of the United States; in fact, the question has never been directly passed upon by the Court, and long before it was incidentally considered, largely in the cases upholding the right of eminent domain and its delegation to railroad corporations with federal charters, the constitutional problem, as Madison said in rejecting the bank bill of 1814, was "precluded by repeated recognitions, under varied circumstances, of the validity of the exercise of a power to establish a bank by Congress, in acts of the legislative, executive, and judicial branches of the government, accompanied by indications in

⁵⁹ 37 Stat. L. 552.

⁶⁰ Sloane, *Party Government in the United States of America*, p. 316.

⁶¹ Public, No. 69, 63d Congress; Act of March 12, 1914. See also 63d Cong., 1 Sess., S. Rept. No. 65; 63d Cong., 2d Sess., H. Rept. No. 341, and Weems, "Government Railroads in Alaska," *North American Review*, April, 1914.

different modes of a concurrence of the general will of the nation."⁶² Such a test, however, is by no means adequate.

For a time the question of congressional power was acute, and its existence was not acknowledged, even by some who cannot be called strict constructionists. The opinions held by Congress and the executive have already been reviewed; but Monroe's elaborate veto message on the "gate bill" gave the Supreme Court justices an opportunity to express their views informally, for he sent a copy of his paper to each member of the Court. In his reply Justice Johnson intimated that the doctrine of *McCulloch v. Maryland*⁶³ committed the Court to upholding a power in Congress to construct roads for military and postal purposes; Marshall considered the question one "on which many divide in opinion, but all will admit that your views are profound and that you have thought much on the subject." Story was non-committal, and thus one of the few attempts to get an informal expression of opinion from the Supreme Court was a failure.⁶⁴

It is difficult to see how, logically, there can be any doubt as to a very wide authority in Congress. A fair interpretation of the word "establish" comprehends "construction" or at least something more than "designation"; otherwise it would have been futile for the Articles of Confederation and the Constitution to give Congress powers under which it has undertaken to "establish" navy hospitals, trading houses with the Indians, inferior courts, rules of capture, and regulations of trade. The second portion of the postal clause did not appear in the Articles of Confederation, and the grant in the Constitution was absolute, with no limita-

⁶² Richardson, vol. ii, p. 555.

⁶³ 4 Wheat. 316 (1819).

⁶⁴ In his Commentaries, Story devotes twenty pages to an exposition of both sides of the controversy and concludes: "The reader must decide for himself, upon the preponderance of the argument." Vol. iii, p. 46. The incident of submitting the message to the Supreme Court is given in detail by Schouler, *History of the United States*, vol. iii, p. 254 ff. As to advisory opinions, see 1 Willoughby on the Constitution, 13, and Thayer, *Cases on Constitutional Law*, vol. i, p. 175.



tions as to state action. A restricted interpretation, applied to the first part of the clause, as demanded by consistency, would give Congress authority to provide postoffices, but without mails, carriers, routes, secure transmission, or revenue. That Congress in fact had the power to construct roads has been made evident, I think, by the debates on the various measures that were proposed.

But as has been seen in the legislation concerning the Cumberland Road, the consent of the states was required before construction could be started, and limitations were imposed on the federal power. So also, it was at first maintained that Congress did not have the right to keep the roads open, in repair, and to impose tolls for their use, whether they had been constructed under national authority or had simply been designated as mail routes. For example, the Act of March 26, 1804, provided "that whenever it shall be made to appear to the satisfaction of the postmaster general that any road established by this or any former act, as a postroad, is obstructed by fences, gates or bars, other than those lawfully used on turnpike roads, to collect their toll, and not kept in good repair with proper bridges and ferries, where the same may be necessary it shall be the duty of the postmaster general to report the same to Congress, with such information as can be obtained, to enable Congress to establish some other road, instead of it, in the same main direction."⁶⁵

In 1812 Gallatin made a report to the President on the Cumberland Road and referred to the necessity of levying

⁶⁵ 2 Stat. L. 275, 277. In 1810 the postmaster general was given authority to "provide for the carriage of the mail on all postroads that are or may be established by law," and to "direct the route or road, when there are more than one between places designated by law for a postroad, which route shall be considered as the postroad"; and the lines designated in contracts for carrying the mail were to be considered postroads within the provisions of the act. 2 Stat. L. 592. But in 1825 while the authority of the postmaster general to designate different routes was continued, there was a further provision that in cases not covered by contracts, "the road, on which such mail shall be transported, shall become a postroad and so continue until the transportation thereon shall cease." 4 Stat. L. 102.

tolls sufficient to keep certain portions in repair ; but this, he said, could be done "only under the authority of the state of Maryland."⁶⁶ The next year the superintendent of the road reported to Gallatin that he expected the Maryland legislature to pass a law, "authorizing the President to receive toll, for the purpose of repairing the road, and likewise against abuses which are common on all roads of the kind to prevent which laws have been found necessary."⁶⁷ Secretary Dallas was of the same opinion, and in 1815 told the House Committee on the Cumberland Road that Congress had no authority to make provision for tolls and the prevention of abuses. "They can only proceed," he said, "from the legislatures of the states through which the road passes, and consist of an authority for the erection of toll gates, and the collection of a toll sufficient to defray the expenses of repair, and the infliction of penalties upon persons who shall cut, break up, or otherwise destroy or injure the road."⁶⁸

The House Committee, however, held that since a compact had been entered into between the federal government and the states, Congress had the right to legislate in order to carry out its undertaking to open and maintain the road. "If the right to punish these offences belongs to the national government," said the committee, "it may be effected without the passage of any law, by an indictment or information in the courts of the United States, or by enacting statutory provisions fixing the penalties, it being a fundamental right of the judiciary inherent in every government to punish all offences against the laws passed in pursuance of a delegated power independently of express legislative sanctions."⁶⁹

After President Monroe's veto, the Cumberland Road became sadly in need of repairs, and again Congress considered the question of jurisdiction,—whether the right to *preserve*

⁶⁶ Miscellaneous State Papers, vol. ii, p. 175.

⁶⁷ Ibid., p. 205.

⁶⁸ Ibid., p. 272.

⁶⁹ Ibid., p. 301. See U. S. v. Hudson & Goodwin, 7 Cranch 32 (1812).

was incidental to the right to *establish*. The states passed laws to protect the road against injuries and appropriated money for improvements, but the sums provided were inadequate⁷⁰ and soon a disposition was shown to consent to the assumption by Congress of complete control over the Road. The Pennsylvania legislature passed a resolution (1828) giving the federal government permission to collect tolls within the commonwealth, with the reservation that the whole amount collected should be devoted to repairs.⁷¹

Monroe had desired cooperation between the national and local authorities. In his message of December 2, 1823, he urged "an arrangement with the several states through which the Road passes, to establish tolls, each within its limits, for the purpose of defraying the expense of future repairs and providing also by suitable penalties for its protection against future injuries."⁷² This portion of the message was considered by the House Committee on Roads and Canals, whose opinion it was that Congress had itself the right to charge tolls and punish offences; the committee could not approve of an arrangement by which the states might charge tolls: uniformity and one jurisdiction were eminently desirable.⁷³ Yet in 1828-1829 when the whole question of control was again threshed out in Congress, any federal right, either absolutely or by virtue of state permission, to charge tolls, was still denied. Congress simply appropriated \$100,000 for the repair of the road; Monroe's distinction between *appropriation* and *control* was adhered to.⁷⁴

The states, moreover, still asserted plenary authority. In 1833 the Maryland legislature gave the President authority to make a change in the Cumberland Road⁷⁵ and in 1834 Illinois consented to the extension of the national road "through the territory of said state so as to cross the

⁷⁰ Young, *The Cumberland Road*, p. 79.

⁷¹ *Laws of Pennsylvania*, 1827-28, p. 500.

⁷² Richardson, vol. ii, p. 217.

⁷³ 18th Cong., 1st Sess., House Rept. No. 118.

⁷⁴ Act of March 3, 1829; 4 Stat. L. 363.

⁷⁵ *Laws of Maryland*, 1831-1832, ch. 55.

Mississippi River at the town of Alton and no other point."⁷⁶ For various reasons the road was not constructed, but Congress was several times memorialized to take the desired action" and in 1844 the Senate Committee on Roads and Canals, having under consideration a bill to extend the highway to Alton, made a favorable recommendation and pointed out the fact that the consent of the states affected was a necessary preliminary before actual construction could begin.

"The right of the state of Illinois to give or withhold her assent to the construction of the road within her limits," said the committee's report, "cannot be questioned in view of the course pursued by the general government to obtain the consent of other states."⁷⁸ Reports to identical effect were made during the second session of the 28th Congress (January 15, 1845) and the second session of the 29th Congress (January 16, 1847),⁷⁹ the second report being accompanied by a strong letter from Senator Semple of Illinois, who pointed out that his state would never consent to any route other than the one which had been recommended in 1834.

Meanwhile definitive action had been taken during Jackson's administration, as a result of his determined opposition to internal improvements and denial of federal authority to construct roads. "Annual appropriations for the repair of the road were being made, but this method could not continue indefinitely, inasmuch as tolls could not be levied by the United States for repairs. Because of the lack of jurisdiction, a resort to state control, with the consent of Congress became an absolute necessity."⁸⁰ Acts of the Pennsylvania, Maryland, Ohio and Virginia legislatures were, therefore, passed, and congressional assent was given to the erection of toll gates and repairs by the states, with the

⁷⁶ 13 Congressional Debates, 1132.

⁷⁷ 24th Cong., 1st Sess., Sen. Doc. No. 196.

⁷⁸ 28th Cong., 1st Sess., Sen. Doc. No. 324, p. 7.

⁷⁹ 28th Cong., 2d Sess., Sen. Doc. No. 41, and 29th Cong., 2d Sess., Sen. Doc. No. 70.

⁸⁰ Young, *The Cumberland Road*, p. 87.

provision in the compact that no charge should be made for the passage of United States mails, troops or property. In 1879 the control of the states was made complete and unreserved. Yet the original acts of surrender recognized "either a proprietary or jurisdictional interest, or both, in the United States, as follows: (1) something was surrendered; (2) surrender was made by 'compacts' which regulated the number of toll gates and the rates of toll; (3) provision was made for the United States to resume its proprietary or jurisdictional interest at pleasure."⁸¹

But before the legal questions arising out of this surrender were passed upon by the Supreme Court of the United States, the whole problem of congressional power and the rights of the states was carefully considered by the Kentucky Court of Appeals, whose opinion,⁸² treating points *primae impressionis*, is remarkably well considered. The particular question to be decided was whether a contractor for carrying the mail between points within the state on a turnpike road had any right of exemption from the tolls, exacted under the company's charter from other persons for the transit of their horses and stages. The court held that the tolls should be paid.

It recognized that the postal power "being necessarily exclusive, plenary and supreme, no state can constitutionally do, or authorize to be done, any act which may frustrate, counteract, or impair the proper and effectual exercise of it by national authority. From these axiomatic truths it follows as a plain corollary that the general government has the right to transport the national mail *whenever* and *wherever* the national Congress, in the *constitutional* exercise of its delegated power over *postoffices* and *postroads* shall have prescribed." But, said the court, this power was not unlimited, and could not appropriate private property for public

⁸¹ Young, p. 98, and *passim* for an able account of the whole controversy over jurisdiction. I have here attempted to present only the points necessary for an understanding of the constitutional problems that the courts were called upon to consider.

⁸² Dickey v. Maysville, etc., Co., 7 Dana (37 Ky.) 113 (1838).

use without just compensation. If the turnpike was considered as private property in view of the company's franchise, tolls should be paid by the mail contractor ; considering the turnpike as a public state road, the court reached the same conclusion, which, it pointed out, would not have been modified had Congress seen fit to designate this particular road as a mail route. Anyone doubting the logic of this, the court said, "should also doubt whether his own house might not be taken and used as a postoffice without his consent and without any compensation."

The court then proceeded, *obiter*, to explain its understanding of the postroads power. According to reason and philology, the import of "establish" was declared to be, not merely "designate" but "found, prepare, make, institute and confirm." "So too," the court held, "as roads and good roads are indispensable to the effectual establishment of postroads, the supreme power to 'establish postroads' necessarily includes the power to make, repair and preserve such roads as may be suitable. . . ." Congress therefore was considered to have the power to open roads and build bridges when necessary ; there was no question of constitutional right, simply of expediency.⁸³

"Unless Congress shall elect to exercise its right of eminent domain, and buy a state road, or make one, or help to make or repair it, the constitution gives no authority to use it as a postroad without the consent of the state or the owner, without making just compensation for the use." Here was acknowledgment of an authority more far reaching than even the more liberal contemporary opinion gave to Congress ; the court recognized a right of eminent domain to take over a road, but until this was exercised, the mails were subject to tolls.

When, seven years later, the Supreme Court of the United States passed upon the toll question which arose under the

⁸³ "Every postroad is a national road," said the court. "So far as it is a postroad, it is as national as the Chesapeake Bay or the Mississippi River."

compact ceding the Cumberland Road to the states,⁸⁴ there was the same opportunity to make a definite pronouncement as to the authority of Congress to engage in road construction; in its opinion, however, the Court made no use of this opportunity, although a dissentient justice voiced his views that the power of Congress was not so great as that asserted in the Dickey case.

The act of the Ohio legislature in taking over the Cumberland Road specifically provided that tolls should not be collected for the passage of the mails; but the Pennsylvania law was more general, declaring that "no toll shall be received or collected for the passage of any wagon or carriage laden with the property of the United States. . . ." The Maryland act was precisely the same as this, while the Virginia statute followed the Ohio law. In 1836, however, Pennsylvania declared that the exemption should be only in proportion to the amount of property belonging to the United States, and "that in all cases of wagons, carriages, stages or other modes of conveyance, carrying the United States mail, with passengers or goods, such wagon, stage, or other mode of conveyance shall pay half-toll upon such modes of conveyance."

The validity of this legislation was the question presented to the Supreme Court, and in its decision the Court could well have entered upon a discussion of the power of Congress in the premises. But Chief Justice Taney, who delivered the opinion, was at pains to point out, "that the constitutional power of the general government to construct this road is not involved in the case before us; nor is the court called upon to express any opinion on that subject; nor to inquire what were the rights of the United States in the road previous to the compacts hereinbefore mentioned."

Taney simply held, therefore, that "the United States have unquestionably a property in the mails"; that this property was exempted from the payment of tolls by the terms of the compact, but this exemption should not apply to

⁸⁴ Seabright v. Stokes, 3 Howard 151 (1845).

other property in the same vehicle, nor to any person unless in the service of the United States. Finally, in answer to the objection that small parcels might be sent by a number of conveyances to relieve them from the payment of tolls, Taney held that "the United States cannot claim an exemption for more carriages than are necessary for the safe, speedy, and convenient conveyance of the mail."

From Taney's judgment, Justice McLean dissented, primarily on the ground that "the mail of the United States is not the property of the United States," and that charging tolls for its passage was not in violation of the compact. Justice Daniels, however, objected upon different grounds, and declared that it was necessary to consider "the operation and effect of the compact insisted upon as controlled and limited by the powers of both contracting parties."

"I hold then," he declared, "that neither Congress nor the federal government in the exercise of all or any of its powers or attributes possesses the power to construct roads, nor any other description of what have been called internal improvements within the limits of the states. That the territory and soil of the several states appertain to them by title paramount to the Constitution, and cannot be taken, save with the exception of those portions which might be ceded for the seat of the federal government and for sites permitted to be purchased for forts, arsenals, dockyards, etc. That the power of the federal government to acquire, and that of the states to cede, to that government portions of their territory, are by the Constitution limited to the instances above adverted to, and that these powers can neither be enlarged, nor modified, but in virtue of some new faculty to be imparted by amendments of the Constitution.

"I believe that the authority vested in Congress by the Constitution to establish postroads, confers no right to open new roads, but implies nothing beyond a discretion in the government in the regulations it may make for the post-office department for the selection amongst the various routes, whilst they continue in existence, of those along

which it may be deemed most judicious to have the mails transported. I do not believe that this power given to Congress expresses or implies anything peculiar in relation to the means or modes of transporting the public mail, or refers to any supposed means or modes of transportation beyond the usual manner existing and practised in the country, and certainly it cannot be understood to destroy or in anywise to affect the proprietary rights belonging to individuals or companies vested in those roads. It guarantees to the government the right to avail itself of the facilities offered by those roads for the purposes of transportation, but imparts to it no exclusive rights—it puts the government upon the footing of others who would avail themselves of the same facilities.”

For these reasons, “the government could legally claim no power to collect tolls, no exemption from tolls, nor any diminution of tolls in their favor, purely in consequence of their having expended money on the road, and without the recognition by Pennsylvania of that expenditure as a condition in any contract they might make with that state.” Nevertheless the United States could contract with Pennsylvania, and so Justice Daniels examined the terms of the agreement, coming to the conclusion that by its terms, United States mail was not exempt from toll charges.”

While the authority of the majority opinion in this case is somewhat lessened by the fact that the argument was as to the meaning of the compact, it was held, impliedly at least, that in order to carry out one of its delegated powers,—the establishment of postoffices and postroads,—the United

⁸⁸ See also *Neil v. Ohio*, 3 How. 720 (1845), and *Achison v. Hudson*, 12 How. 293 (1851). Congress, under an act approved February 25, 1867, granted the state of Oregon certain lands for the construction of a military road, with the reservation that it should be free for the passage of federal property, troops, or mails. An incorporated company undertook construction of the road, but was not permitted to charge tolls. It was provided in the grant that bridges should be constructed to permit the use of the road by wagons. This was done by parties other than the road company, and when mail contractors paid them tolls they had a right of action for reimbursement from the feisor company. *Schutz v. Dalles Military Road Co.*, 7 Or. 259 (1879).

States might, by compact, enter upon a scheme of internal improvements. Furthermore, the court, by holding that the general government had the right to enter into the compact of surrender, recognized an original federal interest in the Cumberland Road. The clear import of the majority opinion is, I think, that if Taney had considered it necessary to pass upon the point, Congress would have been accorded the right to construct postroads, and this would have included authority to charge tolls for the use of the highways by others than the postoffice department.⁸⁶

These adjudications were carried a long step further when the Supreme Court asserted the federal right of eminent domain which had been foreshadowed in the Dickey case, but not exercised by Congress.⁸⁷ In 1864 the Northern Pacific Railroad was incorporated, and lands were granted to aid in the construction, but the act provided that the company "shall obtain the consent of the legislature of any state through which any portion of said railroad line may pass, previous to commencing the construction thereof." Congress reserved the right to appeal or amend the act, "to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes."⁸⁸ In 1868, however, Congress undertook improvements in the Mississippi River, and authorized its agents to take possession of the necessary materials "after having first paid or secured to be paid, the

⁸⁶ Young, *The Cumberland Road*, p. 100. The question of state tolls on mail carriers will be treated in the chapter on "The Power of the States to Interfere with the Mails."

⁸⁷ "The government of the United States cannot construct a post-road within a state of this union without its consent; but Congress may declare, that is, establish, such a road already opened and made a public highway by the direct or indirect authority of the state. . . . The United States have the mere right of transit over these roads for the purpose of carrying the mail, and in case of obstructing this right their laws provide an adequate remedy. . . . The act of Congress making all railroads postroads means only such as have charters from the several states." *Cleveland, P. & A. R. Co. v. Franklin Canal Co.*, 5 Fed. Cas. 1044 (1853).

⁸⁸ 13 Stat. L. 365.

value thereof which may have been ascertained in the mode provided by the laws of the state."⁸⁹

When the question came before the courts there was little hesitancy in holding that Congress had a right of eminent domain. The Circuit Court for the Southern District of Ohio declared that "the constitutional provisions giving to Congress authority to establish postoffices and postroads, and to make all laws for carrying into effect the enumerated powers, taken together with the declaration that all laws made in pursuance of the Constitution shall be the supreme law of the land, invest Congress with authority to condemn lands situated within a state for use as a postoffice site."⁹⁰ A holding to the same effect was made by the Supreme Court of the United States which declared:

"It is true, this power of the federal government has not heretofore been exercised adversely; but the non-user of a power does not disprove its existence. . . . If the United States have the power, it must be complete in itself. It can neither be enlarged nor diminished by a state. Nor can any state prescribe the manner in which it must be exercised. The consent of a state can never be a condition precedent to its enjoyment."⁹¹

But before this right of eminent domain was recognized, a broad legislative control had been assumed over the highways of the country. In 1838 Congress declared "that each and every railroad within the limits of the United States which now is, or hereafter may be made and completed, shall be a postroute,"⁹² and in 1856, the Supreme Court (under the commerce clause, however) sanctioned a further extension.

Bridges across the Ohio River at Wheeling were alleged by the State of Pennsylvania to be an obstruction of navigation and their removal was ordered by the Supreme Court.

⁸⁹ 15 Stat. L. 124.

⁹⁰ *U. S. v. Inlots*, 26 Fed. Cas. 482 (1873). See also *Trombley v. Humphrey*, 23 Mich. 472 (1871), and 1 Kent's Comm. 268, Note A.

⁹¹ *Kohl v. U. S.*, 91 U. S. 367 (1875).

⁹² 5 Stat. L. 283.

The decree had not been executed when, by act of Congress (1852), the bridges were "declared to be lawful structures in their present positions and elevations, and shall be so held and taken to be, anything in the law or laws of the United States to the contrary notwithstanding," and further, "that the said bridges be declared to be and are established postroads for the passage of the mails of the United States."

Later, the main bridge being blown down, the Supreme Court granted an injunction restraining the reconstruction. The company disregarded the order and upon motions by the plaintiff to attach the defendant's property for contempt, and by the company to dissolve the injunction, the Supreme Court held that the act of Congress vacated the decree and superseded its effect and operation. The Court said:

"We do not enter upon the question, whether or not Congress possess the power, under the authority of the Constitution, 'to establish postoffices and postroads' to legalize this bridge; for, concluding that no such powers can be derived from this clause, it must be admitted that it is, at least, necessarily included in the powers conferred to regulate commerce among the several states."⁹³

By the act of March 2, 1861,⁹⁴ moreover, the monopoly provisions of earlier statutes were extended to all post-routes, already or thereafter established, but letter carrier routes within cities did not become postroads until so declared by Congress in 1872, and at the present time, in addition to railroads and routes for the collection and delivery of

⁹³ *Pennsylvania v. Wheeling Bridge Co.*, 18 How. 421 (1856); see also 13 How. 518 (1852).

⁹⁴ 12 Stat. L. 205. See *Blackham v. Gresham*, 16 Fed. Rep. 609 (1883), and *U. S. v. Kochersperger*, 26 Fed. Cas. 803 (1860), where it was said: "The public streets of a municipal town over which the mail may be carried in any of the routes established by Congress as postroads, are doubtless, postroads for the passage of the mail. Whether the streets of such a town can be established by Congress as postroads for any other purpose is questionable. . . . So far as the prohibition of private letter carrying within the limits of such a town may be concerned, the legislative power which is wanting under the head of postroads, may, perhaps, be incidental to the execution of the power to establish postoffices. If this be so, the point may be of little ultimate practical importance." *Blackham v. Gresham* upheld the act of 1861.

the mail, the following are established as postroads: all waters of the United States, canals, and plank roads during the time the mail is carried thereon; "the road on which the mail is carried to supply any courthouse which may be without a mail, and the road on which the mail is carried under contract made by the postmaster general for extending the line of posts to supply mails to postoffices not on any established route, during the time such mail is carried thereon"; and "all public roads and highways while kept up and maintained as such."⁹⁵ In order to insure the safe passage of the mails, the federal government may take all necessary measures to remove obstructions and prevent depredations, even on the public streets of a town.

Finally, under three grants in the Constitution,—to regulate commerce, to establish postoffices and postroads, and to raise and support armies,—Congress has chartered transcontinental railway companies and bridge companies. It has, moreover, granted to these corporations the power of eminent domain to be exercised without the consent or permission of the states. In holding that the franchises of the Union Pacific Railroad Company were federal franchises, properly granted, and beyond the power of the state to tax, the Supreme Court said:

"It cannot at the present day be doubted that Congress under the power to regulate commerce among the several states, as well as to provide for postal accommodations and military exigencies, had authority to pass these laws. The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from state to state, is essential to the complete control and regulation of interstate commerce. Without authority in Congress to establish and maintain such highways and bridges, it would be without authority to regulate one of the most important adjuncts of commerce. This power in former times was exerted to a very limited extent, the Cumberland or National Road being the most notable instance. Its exertion was but

⁹⁵ See Postal Laws and Regulations of 1913, p. 605.

little called for, as commerce was then mostly conducted by water, and many of our statesmen entertained doubts as to the existence of the power to establish ways of communication by land. But since, in consequence of the expansion of the country, the multiplication of its products, the invention of railroads and locomotion by steam, land transportation has so vastly increased, a sounder consideration of the subject has prevailed, and led to the conclusion that Congress has plenary power over the whole subject. Of course, the authority of Congress over the territories of the United States, and its power to grant franchises exercisable therein, are, and ever have been, undoubted. But the wider power was very freely exercised, and much to the general satisfaction, in the creation of the vast system of railroads connecting the East with the Pacific, traversing states as well as territories and employing the agency of state as well as federal corporations."⁹⁸

Early attempts, then, by Congress to furnish postal facilities and open up communication through the construction of highways for the carriage of the mails, met with denials that the power "to establish postroads" meant more than the power to designate the roads to be used, and that, even if this were not so, any action could be taken without the consent of the states whose territory was to be used. To permit national undertakings, however, Monroe developed the distinction that Congress might appropriate for roads to be laid out with the consent of the states, but that the national government had no jurisdictional rights to construct, repair or keep the highways free from obstructions. This distinction, which Von Holst called a "quibble on words," was abandoned by John Quincy Adams, who was a stanch advocate of federal aid, but was revived by Jackson, who believed that appropriations could be made for *national*, but not for *local* purposes. In Congress, during the whole of this period, various views were expressed, but the better

⁹⁸ *California v. Pacific Railroad Co.*, 127 U. S. 1 (1888). Cases involving these points will be treated in a later chapter on "The Extension of Federal Control over Postroads."

opinion, accepted by the authority, if not by the majority, of the speakers, was that Congress had powers (occasionally exercised) which were broader than the executives were disposed to concede.

The continued assertion by the states of plenary authority and the failure of Congress to adopt any successful plan by which the Cumberland Road might be kept in repair, led to compacts of surrender under which the national authorities gave up all control over this highway. The meaning of these compacts was examined by the Supreme Court of the United States, and the plain implication of the decisions (although definite expressions were not necessary for the determination of the particular questions presented) is that Congress had the right to construct postroads and to charge tolls for their use by others than postal officials. This power had already been conceded in an illuminating opinion by the Kentucky Court of Appeals, and the subsequent decisions recognizing a right of eminent domain in the federal government and sanctioning the federal incorporation of railway and bridge companies, are conclusive authority that Congress had the power which the more liberal of its members asserted, but which the states and occasional executives denied. That the power to *establish* postroads comprehends the power to *construct* (compensation being made to the states), to levy tolls, and to repair and keep free from obstructions, has thus been assured by judicial decisions as well as by a fair interpretation of the words of the grant; and any fancied taint of unconstitutionality has been removed from laws which Congress passed under its plenary power "to establish postroads," but which exceeded the limitations laid down by the strict constructionists, and did not come before the Supreme Court for a determination of their validity.

CHAPTER IV

LIMITATIONS ON THE POSTAL POWER

Like all grants to Congress, the postal power is not unrestrained, but, as the Supreme Court has expressed it, the difficulty in setting limits beyond which it may not go, arises, "not from want of power in Congress to prescribe the regulations as to what shall constitute mail matter, but from the necessity of enforcing them consistently with the rights reserved to the people, of far greater importance than the transportation of the mail."¹ One, and perhaps the most important, of these rights is involved when restrictions are applied to periodical publications (particularly in reference to obscene matter and lottery tickets), and the question is at once raised as to the freedom of the press, guaranteed against abridgment by the second clause of the first amendment to the Federal Constitution.² The extent to which this limitation has been ignored is a moot question. On the one hand, we have the confident assertion of Von Holst³ that "the freedom of the press has become a part of the flesh and blood of the American people to such an extent, and is so conditioned by the democratic character of their political and social life, that a successful attack upon it, no matter what legal authority it might have on its side, is impossible. Even the gigantic power of slavocracy gave up the battle as hopeless after the first onslaught."

On the other hand, Hannis Taylor in his recent work on the American Constitution remarks that "little need be said

¹ *Ex parte Jackson*, 96 U. S. 727 (1878).

² "Congress shall make no law . . . abridging the freedom of speech or of the press." An executive order, deriving its validity from an act of Congress would, of course, be illegal if abridging the liberty of the press, even though the act itself did not.

³ Von Holst, *Constitutional History of the United States*, vol. ii, p. 127.

as to the clause forbidding Congress to pass any law 'abridging the freedom of the press,' as that clause has been removed from the Constitution, so far as the mails are concerned, by the judgment rendered in 1892, *In Re Rapier*.⁴ And this extreme view may be said to have received some support from a recent decision of the Supreme Court which upheld the power of Congress to compel newspapers to publish certain information concerning their internal affairs, under penalty, for refusal, of being denied the advantages of low second class rates.⁵ Which, then, is the correct view as to the inviolability or abrogation of this constitutional guarantee in relation to the mails?

Freedom of the Press.—In the Convention which framed the Federal Constitution, Mr. Pinckney, on August 20, 1787, submitted a number of propositions among which was a guarantee that "the liberty of the Press shall be inviolably preserved."⁶ The propositions were referred to the Committee of Detail, and when the question again came up for consideration on September 14, Mr. Pinckney and Mr. Gerry "moved to insert a declaration that the liberty of the Press should be inviolably observed." This motion was lost, Mr. Sherman remarking that "it is unnecessary. The power of Congress does not extend to the Press."⁷

During the discussion of the Constitution by the States, however, the absence of a guarantee of the freedom of the press was frequently adverted to. Speaking in the South Carolina House of Representatives, Mr. C. C. Pinckney said:

"With regard to the liberty of the press, the discussion of that matter was not forgotten by the members of the Convention. It was fully debated, and the impropriety of saying anything about it in the Constitution clearly evinced.

⁴ The Origin and Growth of the American Constitution, p. 230.

⁵ *Lewis Publishing Co. v. Morgan*, 229 U. S. 288 (1913).

⁶ Farrand, vol. ii, pp. 334, 341.

⁷ *Ibid.*, pp. 617, 618; in Pinckney's plan there was a limitation upon Congress to preserve the freedom of the press. *Ibid.*, vol. iii, pp. 599, 609. A motion was made in the convention to appoint a committee to prepare a bill of rights and was unanimously rejected. *Ibid.*, vol. ii, p. 582.

The general government has no powers but what are expressly granted to it ; it therefore has no power to take away the liberty of the press. That invaluable blessing which deserves all the encomiums the gentleman has justly bestowed upon it, is secured by all our state constitutions ; and to have it mentioned in our general Constitution would perhaps furnish an argument, hereafter, that the general government had a right to exercise powers not expressly delegated to it.”⁸

A different theory was advanced by Hamilton, who, answering the objection that the Constitution contained no bill of rights, and treating specifically the absence of any provision safeguarding the press, asked: “What signifies a declaration that ‘the liberty of the press shall be inviolably preserved?’ What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this I infer that its security, whatever fine declarations may be inserted in any Constitution respecting it, must altogether depend upon public opinion, and on the general spirit of the people and of the government. . . .”⁹

⁸ Farrand, vol. iii, 256; Elliot's Debates, vol. iv, pp. 315, 316. Mr. Pinckney obviously overlooked the possibility that the freedom of the press might incidentally be limited through the exercise by Congress of one of its delegated powers, a possibility which became stronger when the doctrine of implied powers was developed. Particularly was this true in reference to postoffice regulations.

⁹ The Federalist, No. 84. In a footnote Hamilton scouts the idea that the liberty of the press may be affected by duties on publications which might be “so high as to amount to a prohibition. . . . We know that newspapers are taxed in Great Britain, and yet it is notorious that the press nowhere enjoys greater liberty than in that country.” The extent of duties, if levied, “must depend on legislative discretion, regulated by public opinion. . . . It would be quite as significant to declare that the government ought to be free, that taxes ought not to be excessive, etc., as that the liberty of the press ought not to be restrained.” Newspapers were in fact taxed during the Civil War, and revenue to the amount of \$980,089 was raised by this means. Lalor, Encyclopaedia of Political Science, (Art., “Press”), vol. iii, 321.

Commenting upon Hamilton's position, Story remarked: “The want of a bill of rights then, is not either an unfounded or illusory objection. The real question is not, whether every sort of right or privilege or claim ought to be affirmed in a constitution ; but whether such, as in their own nature are of vital importance, ought not to receive this solemn sanction.” Story, Commentaries, vol. iii, p. 721.

A proposal to guarantee the freedom of the press was, however, a part of the plan for a bill of rights which Madison introduced in Congress on June 8, 1789.¹⁰ Such a federal provision had been suggested by the ratifying conventions of three states, and similar provisions were contained in nine state constitutions.¹¹ Madison's proposal was amended until it provided that "the freedom of speech and of the press . . . shall not be infringed" and its language was further modified until it took the form in which it became a part of the Constitution.

Concerning the meaning of the amendment at the time of its adoption, there has been little, if any controversy, in spite of Hamilton's declaration to the contrary. Blackstone had announced a generally accepted rule when he said that the liberty of the press "consists in laying no *previous* restraint upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. . . . To punish (as the law does at present) any dangerous or offensive writings, which, when published, shall, on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of the peace and good order, of government and religion, the only foundations of civil liberty."¹²

In the celebrated case of *People v. Croswell*, Alexander Hamilton appearing as counsel for the traverser, laid down

¹⁰ Annals of 1st Congress, vol. i, p. 434.

¹¹ Elliot's Debates, vol. ii, p. 552; vol. iii, 659; Thorpe, Constitutional History, vol. ii, 204.

¹² Cooley's Blackstone, Book iv, pp. 151, 152. Lord Kenyon's view was practically the same. He said: "A man may publish anything which twelve of his countrymen think is not blamable, but he ought to be punished if he publishes what is blamable." *Rex v. Cuthill*, 27 St. Trials, 675. Cf. Professor Dicey's classic statement: "Freedom of discussion is, then, in England little else than the right to write or say anything which a jury, consisting of twelve shopkeepers, think it expedient should be said or written." *Law of the Constitution* (8th ed.), p. 242.

the following rule which was unsupported by the English common law, but which has been accepted as a proper definition by a number of the present-day state constitutions. Hamilton said:

"The liberty of the press consists, in my idea, in publishing the truth, from good motives, and for justifiable ends, though it reflect on the government, on magistrates, or individuals. . . . It is essential to say, not only that the measure is bad and deleterious, but to hold up to the people who is the author, that in this our free and elective government, he may be removed from the seat of power."¹³ And Story was of the opinion that the guarantee "is neither more nor less, than an expansion of the great doctrine, recently brought into operation in the law of libel, that every man shall be at liberty to publish what is true, with good motives, and for justifiable ends."¹⁴

The amendment guaranteeing the freedom of the press has never been before the Supreme Court of the United States in such a manner that a comprehensive consideration of its meaning and effect has been entered upon. This is true even of those cases in which the issue was as to the constitutionality of laws denying newspapers the use of the mails for various reasons.¹⁵ In fact, the most important *dictum* of the Supreme Court occurs in a case where a federal law was not involved, the Court adopting Blackstone's definition and holding that "the main purpose of such constitutional provisions is to 'prevent all such *previous restraints* upon publications as had been practised by other governments,' and they do not prevent subsequent punish-

¹³ Johns. Cas. (N. Y.) 337 (1798); Hamilton's Works (Lodge's Ed.), vol. vii, p. 339. See the able analysis of Hamilton's definition by Professor Schofield, "Freedom of the Press in the United States," in Proceedings of the American Sociological Society, vol. ix, p. 67, at p. 88 ff. (1915).

¹⁴ Story, Commentaries, vol. iii, p. 732. To the same effect is Kent, Commentaries, vol. ii, lec. 24. A different contention, however, seems to have been made by Tucker, Blackstone's Commentaries, vol. ii, App., Note G, pp. 11-30.

¹⁵ These cases will be considered later in this chapter.

ment of such as may be deemed contrary to the public welfare."¹⁶

The cases, as well as the text-writers, seem to settle that the first amendment to the Federal Constitution announced no new principles; it must be interpreted in reference to its meaning at common law. The principal inhibition upon the legislature is in the enactment of *previous restraints*, but even here not absolutely. By the civil law of libel, as it was when the Constitution was adopted, the one publishing had to answer for personal wrongs, and the criminal law could punish for defamatory, obscene, blasphemous or seditious libels. To this extent, there could be, and, in fact, were, previous restraints.¹⁷

But a recent writer, after an able consideration of the early declarations in the light of their history, comes to the

¹⁶ *Patterson v. Colorado*, 205 U. S. 458 (1907). But see Mr. Justice Harlan's dissent, Professor Schofield's criticism of the majority opinion (*Freedom of the Press in the United States*, pp. 110-112), and *Republica v. Oswald*, 1 Dall. 319 (1788). In *U. S. v. Cruikshank*, 92 U. S. 542 (1876), the court held: "The First Amendment to the Constitution . . . like the other amendments proposed and adopted at the same time, was not intended to limit the powers of the state governments in respect to their own citizens, but to operate upon the national government alone. 'The scope and application of these amendments are no longer subjects of discussion here.' They left the authority of the states just where they found it, and added nothing to the already existing powers of the United States."

Professor Schofield is of the opinion that the *Slaughter House Cases*, 16 Wall. 36 (1872), are authority for the principle that "the right to publish truth on matters of national public concern is one of the privileges and immunities of citizens of the United States protected from abridgment by any state by the first prohibition in the Fourteenth Amendment." *Freedom of the Press in the United States*, p. 113. It was held in *U. S. v. Hall*, 26 Fed. Cas. 79 (1871), that "the right of freedom of speech, and other rights enumerated in the first eight articles of amendment to the Constitution of the United States, are the privileges and immunities of citizens of the United States, that they are secured by the Constitution, that Congress has the power to protect them by appropriate legislation." See Lien, *Privileges and Immunities of Citizens of the United States*, p. 69. The Supreme Court in *Patterson v. Colorado*, above, refused to decide whether the liberty of the press declared in the First Amendment, is included by the word "liberty" in the Fourteenth Amendment. These questions, however, are outside the purview of the present discussion.

¹⁷ *Patterson, Liberty of the Press, Speech and Public Worship*, p. 61 ff.; 2 Willoughby on the Constitution, 844; and Townshend, *Slander and Libel*, 2d ed., sec. 252.

conclusion that "they obliterated the English common-law test of supposed bad tendency to determine the seditious or blasphemous character of a publication, and hence obliterated the English common-law crimes of sedition and blasphemy; shifted the law of obscene and immoral publications from the region of libel to the region of public nuisance; and left standing only the law of defamatory publications, materially modifying that." Professor Schofield goes on to say that "the declarations wiped out the English common-law rule in criminal prosecutions of defamatory libel, 'The greater the truth the greater the libel,'" and "threw on American judges in civil and criminal actions for defamatory libel the new work of determining what is truth in a publication on a matter of public concern." The correct view, in this author's opinion, is that "if liberty of the press in the First Amendment means anything it legalizes published truth on all matters of public concern."¹⁸ Without, however, attempting to pass judgment on Professor Schofield's criticism of the cases, it will be possible, from either view, to ascertain whether the freedom of the press has ever been abridged by the denial of the use of the mails (for freedom of publication includes, although perhaps not absolutely, freedom of circulation), and to set the limits of congressional action.

Not until 1836 was there any serious discussion of the meaning of the phrase "liberty of the press" and the limitations it might impose upon the postal regulations which Congress had the power to make.¹⁹ But during this year an exhaustive debate took place in the Senate as a result of President Jackson's message (December 2, 1835) urging the enactment of legislation to check the incendiary publications with which the Northern abolitionists were flooding

¹⁸ Schofield, *Freedom of the Press in the United States*, pp. 78, 79 and 110.

¹⁹ The freedom of the press had, of course, figured in the discussion of the so-called Sedition Act passed by Congress on July 14, 1798. It was a factor also in the consideration by the Senate (December, 1901) of legislation "to prevent the teaching and promulgation of anarchical doctrines in the United States." See my paper, "Federal Interference with the Freedom of the Press," 23 *Yale Law Journal*, 559 and authorities there cited.

the slave states. The evil complained of was serious, and the states were making strenuous objections to the continued presence in the mails of such literature.

On July 29, 1835, for example, the *Southern Patriot* of Charleston, S. C., complained that the mails from the North were "literally overburthened with the newspaper called 'The Emancipator' and two tracts entitled 'The Anti-Slavery Record' and 'The Slaves' Friend.'" This was declared a "monstrous abuse of the public mail" and the publications were denounced as moral poison, the *Patriot* adding: "If the general post office is not at liberty [to prevent circulation], it is impossible to answer for the security of the mail in this portion of the country, which contains such poisonous and inflammatory matter."²⁰ The Charleston postoffice was in fact entered, and this particular consignment of papers destroyed. "Extreme cases require extreme remedies," said the *Patriot*, and the Charleston *Mercury* went so far as to predict that anyone violating the South Carolina law against circulation "would assuredly expiate his offence on the gallows."²¹ Practically all of the Southern States had extremely stringent statutes and several provided capital punishment for offenders.²²

This occurrence at Charleston led Samuel L. Gouverneur, postmaster at New York, to suggest to Amos Kendall, the postmaster general, that the transmission of such papers be suspended, but Arthur Tappan, president of the American Anti-slavery Society, declined to surrender "any rights or privileges which we possess in common with our fellow citizens in regard to the use of the United States mail."²³

²⁰ Niles' Register, vol. xlviii, p. 402.

²¹ Ibid., p. 403.

²² See Hurd, *Law of Freedom and Bondage*, vol. ii, 9, 10, 86, 97, 99, 147, 161, 170, 173. The Virginia law specifically included postmasters within its provisions. One indictment under the Alabama law was based upon the following objectionable language: "God commands, and all nature cries out, that man should not be held as property. The system of making men property has plunged 2,250,000 of our fellow countrymen into the deepest physical and moral degradation, and they are every moment sinking deeper." Niles' Register, vol. xlix, p. 358.

²³ Niles' Register, vol. xlviii, p. 447.

Local postmasters nevertheless began to take matters in their own hands. In regard to the detention of incendiary matter by the Charleston postoffice, Kendall wrote:

"I am satisfied that the postmaster general has no legal authority to exclude newspapers from the mail, nor prohibit their carriage or delivery on account of their character or tendency, real or supposed. . . .

"The post office department was created to serve the people of *each* and *all* of the United States and not to be used as the instrument of their *destruction*. . . . Entertaining these views, I cannot sanction and will not condemn the step you have taken. Your justification must be looked for in the character of the papers detained, and the circumstances by which you are surrounded."²⁴ Kendall left it to the discretion of the local postmasters as to whether they would carry out their official duties, or obey the laws of the local jurisdictions.²⁵

It was, therefore, no surprise when Jackson adverted to the situation, and in his annual message asked for legislation denying such publications the facilities of the postoffice. President Jackson wrote:

"I must also invite your attention to the painful excitement produced in the south, by the attempts to circulate, through the mails, inflammatory appeals addressed to the passions of the slaves, in prints, and in various sorts of publications, calculated to stimulate them to insurrection and to produce all the horrors of a servile war. . . .

"In leaving the care of other branches of this interesting subject to the state authorities, to whom they properly belong, it is nevertheless proper for Congress to take such measures as will prevent the post office department, which was designed to foster an amicable intercourse and correspondence between all members of the confederacy, from being used as an instrument of the opposite character. The general government to which the great trust is confided of

²⁴ Niles' Register, vol. xlviii, p. 448.

²⁵ The legal aspects of this solution of the problem will be treated in the chapter following.

preserving inviolate the relations created among the states by the Constitution is especially bound to avoid, in its own action, anything that may disturb them. I would, therefore, call the special attention of Congress to the subject, and respectfully suggest the propriety of passing such a law as will prohibit, under severe penalties, the circulation in the southern states, through the mail, of incendiary publications intended to instigate the slaves to insurrection."²⁶

On December 21, 1835, Calhoun moved that "so much of the President's message as relates to the transmission of incendiary publications by the United States mail be referred to a special committee." King of Alabama expressed the opinion of several that the regular standing committee on postoffices would do, since he "felt a confident belief that there was no disposition in any of its members to have the public mails prostituted to a set of fanatics." Preston of South Carolina thought that a solution of the evil could be arrived at by a method other than barring the publications from the mail. He proposed "that the depositing of an incendiary publication in the post office should be constituted an offence in the state where it took place, and the letting of it out of the post office should be equally deemed an offence where it occurred."²⁷ Nevertheless, Calhoun's view prevailed and the message was referred to a select committee of which he was made chairman.²⁸ An elaborate report written by him was presented to the Senate on February 4, 1836,²⁹ but with the unqualified concurrence of only one fellow committeeman. The others opposed, either any federal action at all, Calhoun's theory as to the remedy,

²⁶ Statesman's Manual, vol. ii, p. 911.

²⁷ 12 Debates of Congress, 26, 33.

²⁸ Calhoun had for some time been interested in the problem, his attitude being indicated in September, when he wrote to the editor of the *Washington Telegraph*: "The indications are that the south will be unanimous in their resistance and that their resistance will be of the most determined character, even to the extent of disunion; if that should be necessary to arrest the evil. I trust, however, it may be arrested far short of such extremity." *Niles' Register*, vol. xlix, 49.

²⁹ 12 Debates of Congress, 383; Calhoun's Works, vol. v, p. 191.

or some of the details of the measure which was recommended.

The committee's report was based upon the premise that Congress had not the power to pass legislation in accordance with the President's recommendation to exclude the objectionable publications from the mails; such a law, Calhoun thought, "would be a violation of one of the most sacred provisions of the Constitution, and subversive of reserved powers essential to the preservation of the domestic institutions of the slaveholding states, and with them, of their peace and security." This would be closely analogous to the Sedition Act which made it a crime to print "any false, scandalous and malicious writing or writings, against the government of the United States," or Congress, or the President, "with intent to defame . . . or to bring them . . . into contempt or disrepute . . . or to incite against them, or either of them, the hatred of the good people of the United States."⁸⁰

But, said Calhoun, postulating the unconstitutionality of these provisions, "as abridging the freedom of the press, *which no one now doubts*, it will not be difficult to show that if, instead of inflicting punishment for publishing, the act had inflicted punishment for circulating through the mails for the same offence, it would have been equally unconstitutional . . . To prohibit circulation, is in effect, to prevent publication . . . each is equally an abridgment of the freedom of the press.

"The prohibition of any publication on the ground of its being immoral, irreligious, or intended to excite rebellion or insurrection, would have been equally unconstitutional; and, from parity of reason, the suppression of their circulation through the mail would be no less so."⁸¹

The fallacy of this is evident. So far as the Sedition Act is concerned, there are two grounds upon which it could be attacked: lack of congressional power to punish sedition, and abridgment of the freedom of the press. The first

⁸⁰ 1 Stat. L. 596.

⁸¹ Italics are mine.

question, for present purposes, needs no discussion.³² but, as for the second, it is well settled that punishment for seditious, obscene, defamatory and blasphemous publications, is not in violation of the freedom of the press.³³ In the United States, then, there is no constitutional restriction which will compel the government impotently to remain the subject of attacks upon its stability. The Act of 1798 was very broad and objectionable on this ground, but the prohibition of seditious utterances urging the use of force or unlawful means to overthrow the government or falsely defamatory of federal officers would not infringe any provision of the bill of rights.³⁴

³² The subject has been given very adequate treatment by Mr. Henry Wolfe Bilké in his paper on "The Jurisdiction of the United States over Seditious Libel," 50 American Law Register, 1. Mr. Bilké says: "The power to punish, for seditious libel, it is submitted, results to the United States, first from its inherent right to adopt such measures as are necessary for its self-preservation, and second, from its right to adopt such measures as are necessary to secure its officers in the due administration of their duties." While it is the better view that Congress has no powers inherent in sovereignty (see 1 Willoughby on the Constitution, 66), the Supreme Court apparently rested its decisions in the Chinese Exclusion Cases [*sub. nom.* Chae Chan Ping v. U. S., 130 U. S. 581 (1888)], and especially Fong Yue Ting v. U. S., 149 U. S. 698 (1892)] on a contrary theory. These cases furnish the authority for the first conclusion just quoted, while the case of *In Re Neagle*, 135 U. S. 1 (1889), is made the basis for the second reason why it is within the power of the United States to punish sedition. At the time of the passage of the act, it had not yet been decided that the federal courts possessed no common law criminal jurisdiction. *U. S. v. Hudson & Goodwin*, 7 Cranch 32 (1812). The Federalists maintained that such jurisdiction did exist, and that since sedition was a common law offence, Congress could make it statutory and thus aid the courts in its punishment.

³³ Patterson, *Liberty of the Press*, etc., p. 61. Professor Schofield is of the opinion (*Freedom of the Press in the United States*, p. 87) that "Liberty of the Press as declared in the First Amendment and the English common-law crime of sedition cannot co-exist"; but certain it is, that without impairing the freedom of the press, Congress may punish seditious utterances counseling the use of force or unlawful means, and falsely defaming public officials.

³⁴ The weight of authority upholds this view. See Bilké, *op. cit.*; 2 Willoughby on the Constitution, 845; Von Holst (*Constitutional History*, vol. i, 142) considers the law "unquestionably unconstitutional" and this opinion is supported by 2 Tucker on the Constitution, 669. Story (*Commentaries*, vol. iii, 744) declines to commit himself, but intimates that the law was valid. The chief objection, as I have said, was to the very broad terms of the act.

But legislation of the character urged by Jackson was not on all fours with the Sedition Act, for by that act the government was punishing publications which it deemed inimical to its own safety. The incendiary matter, however, concerned the states and only a portion of them; the power of Congress to prohibit it, therefore, was doubtful, unless the evil reached such proportions that the menace to the states was a menace to the federal government. To Calhoun it seemed also that the prohibition of circulation through the mails was tantamount to a prohibition of publication.

The right "to determine what papers are incendiary," the report argued, and as such to "prohibit their circulation through the mail, necessarily involves the right to determine what are not incendiary and to enforce their circulation"; both were matters of state prerogative. And, if "consequently the right to protect her internal peace and security belongs to a state, the general government is bound to respect the measures adopted by her for that purpose, and to cooperate in their execution, as far as its delegated powers may admit, or the measure may require. Thus, in the present case, the slaveholding states having the unquestionable right to pass all such laws as may be necessary to maintain the existing relation between master and slave in those states, their right, of course, to prohibit the circulation of any publication or intercourse calculated to disturb or destroy that relation is incontrovertible." The general government is bound, "in conformity to the principle established, to respect the laws of the state in their exercise, and so to modify its act as not only not to violate those of the states, but as far as practicable, to cooperate in their execution."

Simultaneously with the presentation of this report, Calhoun introduced a bill, framed in accordance with his views, making it unlawful for any postmaster to receive and put in the mail any publication addressed to a jurisdiction where its circulation was forbidden. It was made a crime to deliver such prohibited mail to any person not "duly

authorized . . . to receive the same" by the local authorities, and there was a further provision that the laws of the United States should not be allowed to protect any postmaster accused of violating local regulations. By this means, Calhoun thought to preserve the liberty of the press and hand the matter over to the states for their settlement.³⁵

The constitutional questions involved in the report and law proposed gave rise to a debate of such importance that it has several times been referred to by the Supreme Court of the United States in passing on partially analogous matters.³⁶ Many different views were advanced as to the correct interpretation of the postal grant which at this time had received practically no consideration by the judiciary. Webster, for example, contended that the proposed law "conflicted with that provision of the Constitution which prohibited Congress from passing any law to abridge the freedom of speech or of the press. What was the liberty of the press?" he asked. "It was the liberty of printing as well as the liberty of publishing, in all the ordinary modes of publication; and was not the circulation of papers through the mails an ordinary mode of publication? . . . Congress might, under this example, be called upon to pass laws to suppress the circulation of political, religious, or any other description of publications which produced excitement in the states." Finally, he argued, "Congress had not the power, drawn from the character of the paper, to decide whether it should be carried in the mail or not; for such decision would be a direct abridgment of the freedom of the press."³⁷

Clay argued to the same effect, considering the bill uncalled for by public sentiment, unconstitutional, and containing "a principle of a most dangerous and alarming character."³⁸ Buchanan's views, however, were different. "It

³⁵ 12 Debates of Congress, 383. Postmasters were further enjoined "to coöperate, as far as may be, to prevent the circulation of any pamphlet" where it was forbidden by local laws.

³⁶ *Ex parte Jackson and Lewis Publishing Co. v. Morgan*.

³⁷ 12 Debates of Congress, 1721.

³⁸ *Ibid.*, 1728.

was one thing [he said] not to restrain or punish publications; it was another and an entirely different thing to carry and circulate them after they have been published. The one is merely passive, the other is active. It was one thing to leave our citizens entirely free to print and publish and circulate as they pleased; and it was another thing to call upon us to aid in their circulation. From the prohibition to make any law 'abridging the freedom of speech or of the press,' it could never be inferred that we must provide by law for the circulation through the post office of everything which the press might publish."³⁹

Senator Davis of Massachusetts charged, quite properly, it seems to me, that the report and bill were in conflict, since "the report sets forth that Congress has no power to make a law to restrain the circulation of incendiary papers through the mail, because the post masters have no right to determine what is and what is not incendiary; and because to shut papers out of the mail, would be an invasion of the liberty of the press." But the bill would have the United States adopt and enforce state laws prohibiting the circulation of incendiary papers, "having constitutional power so to do and being bound in duty so to do."⁴⁰ Another difficulty, as Davis went on to say, was "that incendiary matter is anything unfavorable to slavery. The general principle urged by the Senator from Carolina is, that where the states have power to legislate, the United States is bound to carry into execution their laws. They have the power to prohibit the circulation of incendiary matter, and therefore Congress ought to aid that power."

But to this "there are insurmountable difficulties. How and by whom, is this law to be executed? Who is to de-

³⁹ 12 Debates of Congress, 1724.

⁴⁰ Ibid., 1149. As a matter of fact practically all of the state constitutions contained provisions guaranteeing the freedom of the press. There was, however, liability for abuse in Maine, Connecticut, New York, Pennsylvania, Delaware, Kentucky, Tennessee, Indiana, Illinois, Ohio, Mississippi, Alabama and Missouri. The other constitutions gave unrestricted freedom, subject, of course, to the common law exceptions. See Niles' Register, vol. xlix, 236.

termine, and in what manner, whether the Constitution of Massachusetts, which declares that all men are born free and equal, or the Declaration of Independence . . . touch the subject of slavery or are incendiary? Whoever holds this power may shut up the great channels of inter-communication; may obstruct the great avenues through which intelligence is disseminated."⁴¹

The use of the mail was declared by Mr. Morris of Ohio to be "a reserved right, with which no law ought to interfere, and not a governmental machine which Congress can withdraw at pleasure or render nugatory by the acts of its officers." Mr. King raised the question as to federal enforcement of circulation in the states against their will. It would depend, he said, on the character of the paper. "If it were a commercial letter . . . or any other paper connected with the granted powers and social relations, as established by the Constitution, and not inconsistent with the reserved rights of the states, in that case its circulation might be enforced. If of a different character it could not be enforced, and the states whose acknowledged rights might be affected, could interfere and arrest the circulation."⁴²

This debate, although exhaustive, was inconclusive, and some of the opinions expressed seem, in the light of present day construction of the postal clause, almost absurd. Considerably changed, Calhoun's bill came up for a vote on June 8, 1836, and failed of passage. In its amended form, the bill no longer required that postmasters know the laws of the places to which the mail they received was directed. Under a penalty of being removed from office, they were forbidden to deliver publications, the circulation of which was prohibited by local laws, and in the event that state regulations were not regarded, it was provided that "nothing in the acts

⁴¹ 12 Debates of Congress, 1103.

⁴² Ibid., 1124. The House Committee on Postoffices and Post-roads had the President's message under consideration and "came to the conclusion by a vote of 6 to 3, in favor of the constitutionality and expediency of legislation, to restrain the mail circulation of these publications." The majority, however, was unable to agree upon a bill. Ibid., 2944.

of Congress shall be construed" so as to furnish immunity from prosecution.⁴³

There is much to be said in favor of this bill as amended. To make their postal agents amenable to local laws as regards the distribution of certain matter is surely within the constitutional power of Congress, and the aim should constantly be for the federal government to legislate so that national and local statutes will be harmonized. "It must be kept in mind," the Supreme Court has said, "that we are one people and that the powers reserved to the states and those conferred on the nation, are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral."⁴⁴ In several instances this *dictum* of the Court has been effectuated.

The Judiciary Act of 1789⁴⁵ adopted "the laws of the several states" as "rules of decision in trials at common law in courts of the United States in cases where they apply."⁴⁶ Quarantine and pilotage regulations have been freely made by the states.⁴⁷ During Mr. Jefferson's administration (and this was a precedent relied upon by Calhoun), Congress passed a law forbidding the transportation of free negroes from one state into any other where by local laws they were not permitted to reside.⁴⁸ The constitutionality of this act was sustained by Chief Justice Marshall.⁴⁹ So also, the congressional act providing for publicity of campaign expenditures forbids any candidate for Representative in Con-

⁴³ 12 Debates of Congress, 1721. The analogy is noticeable between Calhoun's bill and the Webb-Kenyon Act. The purpose of each was substantially the same,—to make state laws more effective. The latter simply excludes from interstate commerce intoxicating liquor intended to be used in violation of the law of destination, providing no penalties, and merely taking from the offender, when the state attempts to punish, his hitherto valid defense that the local authority was interfering with interstate commerce. See my papers, 1 California Law Review, 499 and 28 Harvard Law Review, 225.

⁴⁴ Hoke v. U. S., 227 U. S. 308 (1913).

⁴⁵ 1 Stat. L. 73.

⁴⁶ Golden v. Prince, 10 Fed. Cas. 542 (1814).

⁴⁷ Cooley v. Port Wardens, 12 How. 299 (1851).

⁴⁸ Act of Feb. 28, 1803; 2 Stat. L. 295.

⁴⁹ Brig *Wilson*, 1 Brockenborough, 423 (1820).

gress or for Senator of the United States to "use money in violation of the laws of the state in which he resides,"⁵⁰ and Congress has adopted and enforced, as its own, state laws governing elections to the House.⁵¹ Finally, in spite of the constitutional requirement that bankruptcy laws must be uniform, Congress has permitted great variance among the several states, their regulations being enforced by the federal courts. To this there is no constitutional objection.⁵²

There is, thus, a considerable body of analogous authority in support of Calhoun's bill as amended. In its first form, the law he proposed was open to objection in that it required deputy postmasters to know the regulations of jurisdictions other than their own, and its effect was to exclude from the mails incendiary matter which the receiving postmaster thought would be considered objectionable at its destination. Under the amended act, however, there would be uniformity, since everything would be transmitted, the restriction being only as to circulation within the states. In administering a great governmental establishment, it should be the aim of Congress not to interfere with the exercise by the states of powers reserved to them.

But Calhoun's argument that the denial of postal facilities was tantamount to a denial of the right of publication, is not well founded, as the Supreme Court of the United States has been at pains to point out; nevertheless it is true that, in some measure at least, the First Amendment insures a use of the postoffice.⁵³ Whether, if Congress had passed legislation excluding the incendiary literature from the mails, absolutely, the constitutional guarantee of a free press would have been violated, depends upon the character of the publications. If they were of such a seditious tendency that their menace of established institutions in the states was a menace to the federal government, if they fomented dis-

⁵⁰ Act of August 19, 1911; 37 Stat. L. 25.

⁵¹ *Ex parte Siebold*, 100 U. S. 371 (1879).

⁵² *Hanover Bank v. Moyses*, 186 U. S. 181 (1902).

⁵³ *Ex parte Jackson*, 96 U. S. 727 (1878); see the quotation from this case, below, pp. 115-116.

order and proposed to abolish slavery otherwise than by law, their utterance could have been prohibited, and the denial of postal facilities would have been constitutional. Or, if the objectionable publications did not affect the general government, but incited to arson, murder, etc., and were not simply political appeals, they could have been excluded, and there would have been no infringement of the freedom of the press. But the power of Congress did not extend to the denunciation of anything unfavorable to slavery; freedom of circulation could not be denied publications unless they fell within the limits stated above.

The views expressed in this debate on Calhoun's bill were urged before the Supreme Court of the United States with considerable force when it was called upon to determine the constitutionality of the act excluding lottery tickets from the mails. The prevailing opinion in the senatorial debate had been, as we have seen, that Congress did not possess the power to prohibit the carriage in the mails of the incendiary publications, and to this citation of authority the Supreme Court replied:

"Great reliance is placed by the petitioner upon these views, coming as they did in many instances, from men alike distinguished as jurists and statesmen. But it is evident that they were founded upon the assumption that it is competent for Congress to prohibit the transportation of newspapers and pamphlets over postal routes in any other way than by mail; and of course, it would follow, that if with such a prohibition, the transportation in the mail could also be forbidden, the circulation of the documents would be destroyed and a fatal blow given to the freedom of the press. But we do not think that Congress possesses the power to prevent the transportation in other ways, as merchandise, of matter which it excludes from the mails. To give efficiency to its regulations and prevent rival postal systems, it may, perhaps, prohibit the carriage by others for hire, over postal routes, of articles which legitimately constitute mail matter, in the sense in which those terms were

used when the Constitution was adopted,—consisting of letters, and of newspapers and pamphlets, when not sent as merchandise,—but further than this its power of prohibition cannot extend.”

And in making a bare denial of the charge that the law abridged the liberty of the press, the Court went on to say:

“In excluding various articles from the mail, the object of Congress has not been to interfere with the freedom of the press, or with any other rights of the people, but to refuse its facilities for the distribution of matter deemed injurious to the public morals. . . .

“Nor can any regulations be enforced against the transportation of printed matter in the mail, which is open to examination, so as to interfere in any manner with the freedom of the press. *Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value. If, therefore, printed matter be excluded from the mails, its transportation in any other way cannot be forbidden by Congress.*”⁵⁴

In 1890 Congress extended the inhibition to “any newspaper, circular, pamphlet, or publication of any kind, containing any advertisement of any lottery,” and again the Supreme Court held that there had been no impairment of the freedom of the press. The Court said:

“We cannot regard the right to operate a lottery as a fundamental right infringed by the legislation in question; nor are we able to see that Congress can be held, in its enactment, to have abridged the freedom of the press. The circulation of newspapers is not prohibited, but the government declines itself to become an agent in the circulation of printed matter which it regards as injurious to the people. The freedom of communication is not abridged within the intent and meaning of the constitutional provision unless Congress is absolutely destitute of any discretion as to what shall, or shall not be carried in the mails, and compelled

⁵⁴ Ex parte Jackson, 96 U. S. 733 (1878); italics are mine.

arbitrarily to assist in the dissemination of matter condemned by its judgment, through the governmental agencies which it controls. That power may be abused furnishes no ground for a denial of its existence, if government is to be maintained at all."⁵⁶

It should be remarked that in these cases the reasoning was largely based on the assumption that prohibiting circulation through the mails was not equivalent to prohibiting publication, and Congress could thus deny postal facilities to matter which it deemed injurious to the people, without interfering with the liberty of the press, since transportation between the states, outside of the mails, would still be possible. But it would seem that this doctrine was repudiated, inferentially at least, when the Supreme Court upheld the law excluding lottery tickets from interstate commerce,⁵⁶ and it would, therefore, it seems to me, have been far better if the Court, in the first instance, had adopted other reasoning. It could have held that the liberty of the press suffered abridgment by a denial of postal facilities, but that lottery advertisements, by common opinion, had become as objectionable as immoral writings, and that the latter class,—an exception to the common law guarantee,—could, by reason of a developing moral sense, be made to include the former. Or the Court could have announced as a rule what is probably true, independent of judicial acceptance, that the freedom of the press does not include freedom of advertisement. Or, to advert to the view of Professor Schofield, if the First Amendment protects only publications which have an educational value on matters of national public concern, lottery advertisements do not come within this class; nor do obscene writings.⁵⁷ Any one of these theories would have permitted the Supreme Court to render

⁵⁶ *In re Rapier*, 143 U. S. 110 (1892); 26 Stat. L. 465.

⁵⁶ *Champion v. Ames*, 188 U. S. 321 (1902). See Goodnow, *Social Reform and the Constitution*, p. 83, and 2 Willoughby on the Constitution, 741. A flatfooted declaration that the liberty of the press is subject to police regulations concerning what is to be carried in the mails, would, I think, have been justifiable. But the holding of the *Jackson* case is different.

⁵⁷ Schofield, *Freedom of the Press in the United States*, p. 82.

a logical decision, without putting forth a *dictum* that Congress could not prevent the transportation in other ways of matter excluded from the mails, for this would be a check on circulation which would be a check on publication, and then being forced to take a contrary position in order to declare constitutional a statute which exercised the very power that the Court had doubted. Calhoun's contention, therefore, seems to be the more logical. As it was, the *ratio decidendi* of the Court in the Jackson and Rapier cases would have been impossible had the restraint been against writings of an admittedly innocuous character, against political opinions, for example, or against matters not so universally condemned under the police power. And, to repeat, the Court was forced to deny what, I think, is undoubtedly the better doctrine,—that the liberty of the press may be abridged by restrictions on the use of the mails,—a doctrine that will probably be returned to if Congress legislates on publications that are unobjectionable.

The question of anarchistic publications and the postoffice was raised in March, 1908, when President Roosevelt wrote to Attorney General Bonaparte:

"By my direction the Postmaster General is to exclude *La Question Sociale*, of Paterson, N. J., from the mails, and it will not be admitted to the mails, unless by order of the court, or unless you advise me that it must be admitted."⁵⁸

In reply to the President's letter, Secretary Bonaparte wrote:

"I am obliged to report that I can find no express provision of law directing the exclusion of such matter from the

⁵⁸ 60th Cong., 1st Sess., Senate Doc. No. 426. The paper in question was undoubtedly anarchistic in its tendencies and certain of its sentiments were seditious libels. One editorial, for instance, contained the following:

"Dynamite will help us to win. Two or three of us can deny a regiment of soldiers without fear. . . . Show no sympathy for any soldiers, even if they be sons of the people. As soon as we get hold of the police station, it is our victory. The thing is to kill the entire force. . . . We must get into the armory, and in case we cannot, then we will blow it down with dynamite. . . . We must set fire to three or four buildings in different locations . . . and then start a fire in the center of the city."

mails, or rendering its deposit in the mails an offense against the United States"; but "I have the honor to advise you that it is clearly and fully within the power of Congress to exclude from the mails publications" such as *La Question Sociale*, "and to make the use, or attempted use, of the mails for the transmission of such writings a crime against the United States."

What Congress thought of anarchy, Mr. Bonaparte said, was shown by the Act of March 7, 1907,⁵⁹ excluding and providing for the deportation of anarchists, and the Attorney General made this implied expression of legislative authority (even though in 1903 Congress had expressly refused to pass a law directed against anarchistic publications) a sufficient basis to legalize the action of the President and exclude newspapers which advocated the opinions quoted. The Attorney General's opinion concluded:

"In the absence of any express provision of law or binding adjudication on this precise point, . . . I advise you that, in my opinion, the Postmaster General will be justified in excluding from the mails any issue of any periodical, otherwise entitled to the privileges of second class mail matter, which shall contain any article constituting a seditious libel and counselling such crimes as murder, arson, riot, and treason."

Such action, the opinion said, would be perfectly safe, since "it is well settled that at common law the owner of a libelous picture or placard or document of any kind is entitled to no damages for its destruction in so far at least as its value may depend on its unlawful significance." Hence the federal statutes which provide punishment for postmasters who may "unlawfully detain" or "improperly detain" mailable matter, would not operate.⁶⁰

⁵⁹ 34 Stat. L. 908.

⁶⁰ Rev. Stat. Secs. 3890, 5471. But is this illustration on all fours with the question of illegally excluding *La Question Sociale*? Mr. Bonaparte mentions the fact that while the article "constitutes a seditious libel and its publication, in my opinion, is undoubtedly a crime at common law," it is not an "offense against the United States in the absence of some federal statute making it one." *U. S. v. Hudson & Goodwin*, 7 Cranch 32 (1812).

As a matter of fact, the newspaper was excluded for reasons other than its contents, but President Roosevelt transmitted the Attorney General's opinion to Congress and in a special message said:

"Under this opinion I hold that the existing statutes give the President power to prohibit the Postmaster General from being used as an instrument in the commission of crime; that is, to prohibit the use of the mails for the advocacy of murder, arson, and treason; and I shall act upon such construction. Unquestionably, however, there should be further legislation by Congress in this matter. When compared with the suppression of anarchy, every other question sinks into insignificance." Congress has since acted by declaring that the term "indecent" in the section against obscene writings, should include "matter of a character tending to incite arson, murder or assassination."⁶¹

The Attorney General in his opinion, it may be remarked, did not mention the freedom of the press, and this question was not involved. From what has already been said, it follows that there is no question as to the competency of Congress to pass legislation designed to deny the mails to anarchistic publications if they incite to crime. But the Attorney General's argument as to the power of the President was not well founded; it granted to an administrative officer arbitrary discretion based on no explicit or implied legislative authority, and sanctioned the exercise of this power on the ground that the one injured could have no legal redress. It is, however, simply a question of whether the exclusion was *ultra vires*, not whether it was an abridgment of the freedom of the press.⁶²

⁶¹ Act of March 4, 1911; 36 Stat. L. 1339.

⁶² In *U. S. ex rel. Turner v. Williams*, 194 U. S. 279 (1904), the Supreme Court held that the provisions of the immigration act of 1903 (32 Stat. L. 1213) for the exclusion and deportation of alien anarchists did not violate any constitutional limitations and that the freedom of the press was not involved. "If the word 'anarchists' should be interpreted as including aliens whose anarchistic views are professed as those of political philosophers innocent of evil

The latest question of the freedom of the press was considered by the Supreme Court in 1913 when it sustained the so-called "newspaper publicity law." This required publications entered as second class matter (with a few exceptions) to furnish the postoffice department with, and publish semi-annually, a sworn statement of their editors and owners, in addition to marking as an advertisement anything for the publication of which, compensation is received. Newspapers were also required to give information as to their circulation figures.⁶³

The law was vigorously assailed as being *ultra vires*, as denying due process of law, and as impairing the freedom of the press. It "establishes," said one of the counsel, "a governmental control over newspaper publishers and dictates to them what shall or shall not be published and the manner, form, and time of publishing. In other words, Congress in plain language provided that matter inherently proper and mailable shall be unmailable, not on account of any inherent defect, but solely because the publisher may refuse or neglect to advise the public of certain of his private matters as to which Congress seems to desire the public to be informed. This is not regulation, but paternalism, and a direct and positive abridgment of the freedom of the press."⁶⁴

The Supreme Court, however, by a narrow line of reasoning, sustained the statute, the opinion showing that in order to receive "entry" as second class matter and get the benefit of low rates, the publication must answer a number of questions concerning ownership, editorial supervision, circulation, sample copies, and advertising discrimination. The Court considered the new law as simply laying down additional conditions, compliance with which would enable the publishers to continue "to enjoy great privileges and

intent, . . . in the light of previous decisions, the act, even in this aspect, would not be unconstitutional, as applicable to any alien who is opposed to all organized government."

⁶³ 37 Stat. L. 553.

⁶⁴ *Lewis Publishing Company v. Morgan*, 229 U. S. 288 (1913). Brief of Morris and Plante, p. 41.

advantages at the public expense." The Court went on to say:

"This being true, the attack on the provision in question as a violation of the Constitution because infringing the freedom of the press and depriving of property without due process of law, rests only upon the illegality of the conditions which the provision exacts in return for the right to enjoy the privileges and advantages of the second class mail classification. The question, therefore, is only this: Are the conditions which were exacted incidental to the power exerted of conferring on the publishers of newspapers, periodicals, etc., the privileges of the second class classification, or are they so beyond the scope of the exercise of that power as to cause the conditions to be repugnant to the Constitution? We may say this is the question, since necessarily if the power exists to legislate by discriminating in favor of the publishers, the right to exercise that power carries with it the authority to do those things which are incidental to the power itself, or which are plainly necessary to make effective the principal authority when exerted."⁶⁸

Whether this reasoning seems convincing or not, it must nevertheless be conceded that legislation to the same effect, not based upon the power of Congress over the mails, would be unconstitutional, and that in this case, Congress has been permitted to do by indirection what it has not the power directly to accomplish. The step is a short one to requiring, for a continuance of the low second class rates, that newspapers print, or refrain from printing, reading matter of a specified character. The decision, however, lends no support to the belief that if this indirect regulation is carried further, or if there is a real interference with the freedom of the press, the Supreme Court will not intervene.

Such are the incidents in which the liberty of the press has figured, and it is difficult to see how it has ever been

⁶⁸ *Lewis Publishing Company v. Morgan*, above. Another and more significant phase of this important case is treated in the last chapter of this study.

abridged. The executive order of President Roosevelt excluding *La Question Sociale* from the mails was *ultra vires*, but, as Attorney General Bonaparte pointed out, the injured parties had slight chance of a remedy at law. Certain it is that the paper in question was so seditious that under a state statute publication could have been stopped, and that an Act of Congress, forbidding such periodicals the privilege of the mails, would not have been in violation of the First Amendment.

The decisions of the Supreme Court which have been quoted lead to no conclusion other than that any attempt on the part of Congress to place a previous restraint upon the press, or even to deny it postal facilities, for no discernible reason, would receive a judicial veto. The exclusion of lottery tickets, obscene matter, and other writings inimical to the public morals, has been clearly within the power of Congress, and legislation forbidding seditious and anarchistic publications when directed against the federal government, or banning them from the mails, would be constitutional. It is true that the "newspaper publicity law," strictly speaking, is a previous restraint, but the Supreme Court considered it as merely laying down additional and reasonable conditions, compliance with which would enable periodical publications to continue to enjoy great and exclusive advantages of second class privileges,—a satisfactory, if not conclusive basis for the decision; as interpreted by the Court, the act promotes, rather than abridges, the liberty of the press.

Neither reason nor precedent justifies the view, eloquently urged by counsel in this case, that Congress by the law exercises "a governmental control over newspaper publishers and dictates to them what shall not be published, and the manner, form, and time of publishing." On the contrary, that great "palladium of liberty,"—the freedom of the press,—seems to be in no danger of demolition through congressional action.

Unreasonable Searches and Seizures.—As with the free-

dom of the press, the Supreme Court of the United States has rarely been asked to restrain the postal power under the provision of the Fourth Amendment to the Constitution which declares that "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."⁶⁶ The scope of this limitation, as applied to the mails, has been described by the Supreme Court in the following terms:

"A distinction is to be made between different kinds of mail matter, between what is intended to be kept free from inspection, such as letters and sealed packages, subject to letter postage, and what is open to inspection. . . . Letters and sealed packages of this kind in the mail are to be as fully guarded from examination and inspection, except as to their outward form and weight, as if they were retained by the parties forwarding them in their own domiciles. The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers thus closed against inspection, wherever they may be. Whilst in the mail, they can only be opened and examined under like warrant, issued upon similar oath or affirmation, particularly in describing the thing to be seized, as is required when papers are subjected to search in one's own household. No law of Congress can place in the hands of officials connected with the postal service any authority to invade the secrecy of letters and such sealed packages; and all regulations adopted as to mail matter of this kind must be in subordination to the

⁶⁶ For an historical consideration of this amendment, see *Boyd v. U. S.*, 116 U. S. 616 (1886). See also May, *Constitutional History of England*, vol. ii, p. 245 ff.; Cooley's *Blackstone*, Book iv, p. 290 ff.; *Annals of 1st Congress*, vol. i, pp. 434, 754, and Story, *Commentaries*, vol. iii, p. 748. Discussions of the general scope of the provision are to be found in 2 Willoughby on the Constitution, 828; Cooley, *Constitutional Limitations* (7th ed.), p. 429, and Bruce, "Arbitrary Searches and Seizures as Applied to Modern Industry," *Green Bag*, vol. xviii, p. 273.

great principle embodied in the Fourth Amendment of the Constitution."⁶⁷

The limitation operates chiefly upon administrative officials who attempt to get evidence of violations of the law regarding obscene literature and fraudulent matter excluded from the mails. In regard to this the Court said:

"Whilst regulations excluding matter from the mails cannot be enforced in a way which would require or permit an examination into letters, or sealed packages subject to letter postage, without warrant issued upon oath or affirmation, in the search for prohibited matter, they may be enforced upon competent evidence of their violation obtained in other ways; as from parties receiving the letters and packages, or from agents depositing them in the postoffices, or others cognizant of the facts. And as to the objectionable printed matter which is open to examination, the regulations may be enforced in a similar way, by the imposition of penalties for their violation through the courts, and, in some cases by the direct action of the officers of the postal service. In many instances those officers can act upon their own inspection, and, from the nature of the case, must act without other proof; as where the postage is not prepaid, or where there is an excess of weight over the amount prescribed, or where the object is exposed, and shows unmistakably that it is prohibited, as in the case of an obscene picture or print. In such cases, no difficulty arises, and no principle is violated in excluding the prohibited articles and refusing to forward them. The evidence respecting them is seen by everyone and is in its nature conclusive."⁶⁸

This view of the law has been acquiesced in by Congress which has provided that nothing in the acts excluding certain matters from the mails, "shall be so construed as to authorize any person other than an employee of the Dead Letter Office, duly authorized thereto, to open any letter not addressed to himself."⁶⁹ The regulations promulgated

⁶⁷ *Ex parte Jackson*, 96 U. S. 727 (1878).

⁶⁸ *Ibid.* But see *Hoover v. McChesney*, 81 Fed. Rep. 472 (1897).

⁶⁹ 25 Stat. L. 873.

for the postoffice department, provide, moreover, that neither postmasters, inspectors, employees, nor officers of the law, "without legal warrant therefor, have authority to open under any pretext a sealed letter while in the mails, not even though it may contain improper or criminal matter, or furnish evidence for the conviction of offenders," and out of excess of caution, it is further added that "the seal of letters or packages suspected to contain unmailable matter shall not be broken to ascertain that fact."⁷⁰ The regulations provide that matter manifestly unmailable shall be withdrawn and sent to the Division of Dead Letters with a statement of the facts upon which such action was taken; if there is doubt as to the propriety of such disposition, the matter shall be sent to the Assistant Attorney General for the Postoffice Department, for his decision.⁷¹ Any unlawful opening of the mail by a postal employee is dealt with criminally.⁷² Special regulations govern the examination by a customs officer of sealed packages supposed to be dutiable, in the presence of the addressee, but before delivery to him.⁷³

If, then, at times, administrative zeal may lead to a disregard of these regulations, the official is criminally liable, and the one whose sealed mail is searched, has a right of action for damages. But the avowed purpose of Congress and of the postoffice department is to subordinate efficiency in the detection of wrongdoing to the right of the people, under the Fourth Amendment, to be secure in their sealed papers when they are in the hands of the government for transmission through the mails.⁷⁴

⁷⁰ Postal Laws and Regulations of 1913, p. 300.

⁷¹ *Ibid.*, p. 313.

⁷² 35 Stat. L. 1125.

⁷³ Postal Laws and Regulations of 1913, p. 372 ff.

⁷⁴ A third limitation on the postal power, namely, due process of law, is most properly treated in the concluding chapter of this essay.

CHAPTER V

THE POWER OF THE STATES TO INTERFERE WITH THE MAILS

In the disputed zone between federal authority and the reserved rights of the states, interesting and often acute problems have, of course, frequently developed. The most important of these have probably been with regard to the national control of interstate commerce and the police power of the states, and several times Congress has passed legislation designed to leave certain subjects within the jurisdiction of the states or to make local regulations more effective. In Jefferson's administration, for example, Congress passed a law prohibiting the transportation of free negroes from one state into another where by local laws they were not permitted to reside;¹ the sale of oleomargarine has been made subject to local regulations;² Congress has forbidden the transportation of game killed in violation of state laws,³ and has twice enacted legislation to enable the states more effectively to regulate the sale of intoxicating liquors.⁴ Such action has been necessary since congressional silence has been interpreted by the courts as meaning that commerce between the states shall be free, just as, when Congress has acted affirmatively, state laws in conflict are thereby suspended: in both cases the supremacy of the federal authority is unquestioned. Nevertheless local jurisdictions have been permitted to exercise a slight measure of police control.⁵

It would seem evident, at first glance, that, inherently,

¹ Act of February 28, 1803, 2 Stat. L. 295; *Brig Wilson*, 1 Brock-enborough 423 (1820).

² 32 Stat. L. 193; *U. S. v. Green*, 137 Fed. Rep. 179 (1905).

³ Criminal Code, sec. 242; *Rupert v. U. S.*, 181 Fed. Rep. 87 (1910).

⁴ Act of August 8, 1890, 26 Stat. L. 313 (*Wilson Act*); Act of March 1, 1913, 37 Stat. L. 699 (*Webb-Kenyon Act*).

⁵ See 2 Willoughby, ch. xlii, and cases there cited.

the power of Congress over the postal system is even more paramount than that over interstate commerce, but there has been practically no judicial determination of the subject, and as there are only a few incidents in which a conflict of jurisdiction has taken place, conclusions as to the exclusiveness of the federal power must be largely speculative. Some aid, it is true, may be drawn from the analogy of interstate commerce, but there is the fundamental difference that postal facilities are established and conducted, while trade between the states is simply regulated, by Congress. From this arises the presumption that the mails are less subject to interference than is interstate trade. Has this in fact proved to be the case?⁶

The first question as to the rights of the states was raised in 1812, when the general assembly of the Presbyterian Church and the Synod of Pittsburgh memorialized Congress to suspend the carrying and opening of the mails on Sunday, but, owing to the "peculiar crisis of the United States" then pending, the petitions were withdrawn and the House Committee on the Postoffice and Postroads did not consider the requests on their merits.⁷ In practice the activities were lessened, offices at which the mail arrived on Sunday being kept open for one hour only, and that not during the time of public worship. So, the Senate Committee to which similar memorials were referred, deemed it inexpedient to make any change, particularly "considering the condition of the country, engaged in war, rendering frequent communication through the whole extent of it absolutely necessary."⁸

The practice to which objection was made had obtained since the adoption of the Constitution. By the postal act passed in 1810⁹ it was made a duty of postmasters "at all

⁶ There is also the question of state power over postroads, but this has been treated in Chapter III, above, p. 82 ff.

⁷ Miscellaneous State Papers, vol. ii (American State Papers, vol. xxi), p. 194.

⁸ American State Papers (Postoffice), vol. xv, p. 47.

⁹ 2 Stat. L. 592.

reasonable hours, on every day of the week, to deliver" mail to the proper persons, and since this provision was reenacted in 1825¹⁰ protests were still received from a number of the states in which rigorous Sunday observance laws had been passed. Upon the memorials which were presented in 1829 the Senate Committee acted unfavorably, but the House Committee acceded so far as to propose the discontinuance of delivery, but the maintenance of transportation;¹¹ the chief objection seemed to be to the keeping open of the postoffices and not to the carrying of the mails, for which, it was realized, the greatest possible expedition was desirable. In 1830 counter memorials opposed "the interference of Congress upon the ground that it would be legislating upon a religious subject and therefore unconstitutional,"¹² but this argument is clearly untenable, since Sunday legislation has uniformly been upheld, not upon religious grounds, but as a valid exercise of the police power,¹³ and Congress certainly has analogous authority so far as concerns the conduct of government business.

During the whole of this period, however, when certain localities and religious bodies desired observance of Sunday by the postoffice, the authority of Congress to make such regulations as it might see fit for the transportation of the mails, was not seriously questioned, and the states did not attempt, under their police power, themselves to take affirmative action. One of the committee reports suggested, but did not argue, a contrary proposition when it asked: "If the arm of the government be necessary to compel respect and obey the laws of God, do not the state governments possess infinitely more power in this respect?" But this implication of authority in the states to interfere with the postal function is later denied when the committee says that

¹⁰ 4 Stat. L. 102.

¹¹ American State Papers (Postoffice), vol. xv, p. 211. For the lengthy memorials presented, see *ibid.*, pp. 229-241.

¹² *Ibid.*, p. 231.

¹³ Freund, Police Power, p. 168 ff.

in order to insure effective Sabbath observance it should be made a crime to receive, write, or read letters.¹⁴ Congress, however, is the sole judge of the primary question. As a House Committee said in 1817: "The power 'to establish postoffices and postroads' is by the Constitution of the United States exclusively tested in Congress; and the transportation and distribution of the mail, at such times and under such circumstances as the public interest may require, are necessarily incident to that power."¹⁵

It should be remembered, however, that the law provided for delivery "at all reasonable hours, on every day of the week," and so the question is different from that decided by the Supreme Court of the United States in *Hennington v. Georgia*,¹⁶ where it was held that a state statute prohibiting the running of freight trains on Sunday was, in the absence of congressional regulation of the subject, not invalid as interfering with interstate commerce. But even if Congress had not provided for the carriage of the mails on Sunday, there could be no stoppage under a state statute, since the subject is one for exclusive federal regulation; and if the freight trains in the Georgia case had carried mails, the decision would have been otherwise.

Similarly, the state laws which provide punishment for working on Sunday are inoperative as applied to postal employees (in discharge of their duty imposed by federal regulations) even though the local statute may make no express exception. The question has rarely come before the courts, but it has been held a work of necessity to shoe

¹⁴ American State Papers (Postoffice), vol. xv, p. 230. See an interesting article on this subject in the *North American Review*, July, 1830.

¹⁵ American State Papers (Postoffice), vol. xv, p. 358.

¹⁶ 163 U. S. 299 (1896). "... legislative enactments of the states passed under their admitted police power, and having a real relation to the domestic peace, order, health and safety of their people, but which, by their necessary operation, affect to some extent, or for a limited time, the conduct of commerce among the states, are yet not invalid by force alone of the grant of power to Congress to regulate such commerce, if not obnoxious to some other constitutional provision or destructive of some right secured by fundamental law. . . ."

horses used by a stage company in transporting the mail.¹⁷ The work done by postal employees would, therefore, be necessary within the exemption made by nearly all Sunday observance laws; but if this were not the case, the laws would not apply.

Closely allied to this question is that of how far the states may go in making police regulations, regard for which will result in a temporary delay of the mails. As early as 1817 it was held by a federal circuit court that a municipal corporation is competent to prevent the reckless driving of a mail carrier through crowded streets.¹⁸ Of similar import was the advice given the postoffice department in 1852 by Attorney General Crittenden, that municipal ordinances prohibiting railroad trains from running at a rate of more than six miles an hour within the town limits, the mails thereby being delayed, were valid regulations and not in conflict with the act of Congress.

"When such regulations," said the opinion, "are fairly and discreetly made with intent to preserve the peace, safety and well being of the inhabitants of the city, they may be said to flow from powers necessary and proper in themselves, which the act of Congress does not intend to take away or impugn."¹⁹

¹⁷ *Nelson v. State*, 25 Texas App. 599 (1888). In some states express exemptions are made for the transportation of the mail. Cf. *State v. Norfolk & W. R. Co.*, 33 W. Va. 440 (1890). A typical Sunday observance statute is the following: "No person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday; and no person having children or servants shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day (works of necessity and charity always excepted)" (*Public General Laws of Maryland* (ed. of 1904), art. xxvii, sec. 384). The general proposition that the state regulations do not apply to postal employees is supported by *Commonwealth v. Knox*, 6 Mass. 76 (1809), which held that it is not an indictable offence for a carrier of the mail to travel on Sunday. This exemption was not applied to passengers, "nor may he [the carrier] blow his horn to the disturbance of serious people." An indictment did lie, however, against the chief justice of Massachusetts and his associates for travelling on Sunday (1793). See "Sunday Laws," in 2 *American Law Review*, 226.

¹⁸ *U. S. v. Hart*, 1 Peters' C. C. 390 (1817).

¹⁹ 5 *Opinions of the Attorneys General*, 554 (1852).

At later dates the validity of similar regulations requiring trains to stop at particular points was passed upon by the United States Supreme Court and the exercise of local authority was, in several cases, declared inoperative, primarily upon the ground that it interfered with the freedom of trade between the states, and the commercial, rather than the postal, power was relied upon, as in federal incorporation, to furnish the basis of the court's decisions. But the fact that, in many instances, the trains carried the mails under contracts which required expedition was incidentally referred to as a further reason for declaring local regulations invalid.

Thus, when an Illinois statute required an interstate train to turn aside from the direct route for a stop at a station three and one half miles away, the Supreme Court held the requirement to be "an unconstitutional hindrance and obstruction of interstate commerce and of the passage of the mails of the United States. . . .

"It may well be, as held by the courts of Illinois, that the arrangements made by the company with the Postoffice Department of the United States cannot have the effect of abrogating a reasonable police regulation of the state. But a statute of the state, which unnecessarily interferes with the speedy and uninterrupted carriage of the mails of the United States, cannot be considered as a reasonable police regulation."²⁰ And in a later case the court said:

"The fact that the company has contracts to transport the mails of the United States within a time which requires great speed for the trains carrying them, while not conclusive, may still be considered upon the general question of stopping such trains at certain stations within the boundaries of a state. The railroad has been recognized by Congress and is the recipient of large land grants, and the carrying of the mails is a most important function of such

²⁰ *Illinois Central R. Co. v. Illinois*, 163 U. S. 142 (1896). See also 143 Ill. 434; 19 L. R. A. 119 (1892).

a road."²¹ The test as laid down by the United States Supreme Court is, therefore, simply one of reasonableness and necessity; and the courts, not the legislatures, are to determine the question.

But there are many cases in which the problem is not so simple, and where the state regulations are so important that their violation should not be permitted under the cloak of federal sanction. Particularly is this true where the detention of a postal employee is, superficially, forbidden under the federal statutes, and there arises the dilemma that either the governmental agent is immune from interference while in discharge of his duties and at all times for acts committed in the course of his employment, or that the national regulations must give way.

For example, from the beginning of congressional activity under the postal power, there has constantly been a prohibition, under severe penalties, of any obstruction of the mail. The federal district court for Maryland considered a case where stage horses upon which an innkeeper had a lien were stopped in the public highway while driving a coach containing the mail. The court held that since the United States could not be sued, "the defendant could not justify the stopping of the mail on principles of common law, as they apply to individuals and to the government." But, further, the defendant was not justifiable under the act of Congress which introduced no exception. "Whether the acts which it prohibits to be done were lawful or unlawful before the operation of that law, or independent of it, might or might not be justified, is not material. This law does not allow any justification of a *wilful and voluntary* act of obstruction to the passage of the mail. If, therefore, courts or juries were to introduce exceptions not found in the law itself, by admitting justifications for the breach of the act, which justifications the act does not allow to be made, it would be an assumption of legislative power."²²

²¹ *Mississippi R. Commission v. Illinois C. R. Co.*, 203 U. S. 335 (1906). See also *Atlantic Coast Line R. Co. v. Wharton*, 207 U. S. 328 (1907).

²² *U. S. v. Barney*, 3 Hughes' Reports (U. S. C. C.) 545 (1810).

And when a warrant in a civil suit was served on a mail carrier and he was detained thereby, Chief Justice Taney (on circuit) held that the warrant was not justification to the traverser, a constable, yet the mere *serving* "would not render the party liable, to an indictment under this law. But if, by serving the warrant, he *detained* the carrier, he would then be liable."²⁸ Here also the immunity was simply as to civil proceedings.

But when a carrier, while discharging his duty, was arrested upon an indictment for murder, and it was argued that this was an obstruction of the mail within the federal statute, the Supreme Court refused to listen to the plea, and held that the law, "by its terms applies only to persons who 'knowingly and wilfully' obstruct the passage of the mail or of its carrier; that is, to those who know that the acts performed will have that effect and perform them with the intention that such shall be their operation. When the acts which create the obstruction are in themselves unlawful, the intention to obstruct will be imputed to their author, although the attainment of other ends may have been his primary object. The statute has no reference to acts lawful in themselves, from the execution of which a temporary delay to the mails unavoidably follows. All persons in the public service are exempt, as a matter of public policy, from arrest upon a civil process while thus engaged. Process of that kind can, therefore, furnish no justification for the arrest of a carrier of the mail. . . . The rule is different when the process is issued upon a charge of felony. No officer or employee of the United States is placed by his position, or the services he is called to perform, above responsibility to the legal tribunals of the country, and to the ordinary processes for his arrest and detention when accused of a felony, in the forms prescribed by the Constitution and laws.

"The public inconvenience which may occasionally follow from the temporary delay in the transmission of the mail

²⁸ U. S. v. Harvey, 8 Law Reporter, 77 (U. S. C. C., 1845).

caused by the arrest of its carriers on such charges is far less than that which would arise from extending to them the immunity for which the counsel of the government contends. Indeed, it may be doubted whether it is competent for Congress to exempt the employees of the United States from arrest on criminal process from the state courts when the crimes charged against them are not merely *mala prohibita* but are *mala in se*. But whether such legislation of that character be constitutional or not, no intention to extend such exemption should be attributed to Congress unless clearly manifested by its language."²⁴

Thus, the Supreme Court of Maine decided that a mail carrier, while in the performance of his duties, is liable to arrest for an offense against the law of the state, even though it be not a felony but a violation of a liquor regulation, and the public employment of the carrier will not justify him in assaulting the officer who serves the warrant.²⁵ It was held, further, that preventing a horse from being taken from the stable for the purpose of carrying the mail was no offense under the federal law since the mail had to be *in transitu*.²⁶

The attachment, knowingly, of a coach carrying the mail is void, being an obstruction;²⁷ but levy on and sale of a ferryboat used to carry the mail do not constitute an obstruction.²⁸ In *United States v. De Mott*²⁹ it was held that the statute "is applicable to a person stopping a train carrying the United States mail, although he has obtained a judgment and writ of possession from a state court against the railroad company in respect to lands about to be crossed by such train." It is, moreover, not a sufficient plea to an

²⁴ *U. S. v. Kirby*, 7 Wall. 482 (1869); see also *U. S. v. Clark*, 23 Int. Rev. Rec. 306 (U. S. D. C., 1877).

²⁵ *Penny v. Walker*, 64 Maine 430 (1874).

²⁶ *U. S. v. McCracken*, 3 Hughes' Reports (U. S. C. C.) 544 (1878).

²⁷ *Harmon v. Moore*, 59 Me. 428 (1871).

²⁸ *Lathrop v. Middleton*, 23 Cal. 257 (1863). In this case, however, the boat was at the time in an unfinished condition and had not been used on the ferry.

²⁹ 3 Fed. Rep. 478 (1880).

indictment for obstructing the mails, that the defendant was required by state law to collect tolls in advance from all drivers of wagons. "It is not the right of the company to the tolls under the state law which is doubted," said the Court, "but the right to stop the passage of the mails to enforce their collection which is denied."³⁰

The rule may thus be stated to be as follows: In order to guard against obstruction of the mails, postoffice employees, while in discharge of their duty, have immunity from interference on civil processes, but are liable for felonies, and perhaps, misdemeanors. But a different and more serious question upon which these cases throw little or no light, is presented when a postal agent in the discharge of a duty imposed by federal law (neglect of duty being punishable) thereby performs an act which has been made criminal by the state.³¹ There are, naturally, but few cases when this conflict arises, but it is entirely possible, perhaps the most favorable opportunity being when a postmaster distributes certain mail matter, the possession or dissemination of which the state has declared unlawful. This conflict was once presented very acutely.

In the senatorial debate on Calhoun's bill to deal with incendiary publications in the mails, the federal question

³⁰ *United States v. Sears*, 55 Fed. Rep. 268 (1893). In *Turnpike Co. v. Newland*, 15 N. C. 463 (1834), it was held that a mail coach was a "pleasure carriage" within the meaning of the local statute imposing tolls for the use of the road. The use of state facilities by persons employed in the federal civil service, said the court, "must be deemed intended to be on the terms prescribed to all persons, unless the law under which it is performed declared the contrary. We have found no act of Congress exempting persons or carriages engaged in the business of the postoffice from the payment of tolls for passing ferries, bridges or roads." Payment was, therefore, required.

³¹ The seriousness of this conflict was well expressed by Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheaton 264 (1821). "To interfere with the penal laws of a state," he said, "where they are not levelled against the legitimate powers of the Union, but have for their sole object the internal government of the country, is a very serious measure which Congress cannot be disposed to adopt lightly or inconsiderately. The motives for it must be serious and weighty. It would then be taken deliberately and the intention would be clearly and unequivocally expressed."

of interference with the freedom of the press received the greatest attention³² and the equally important question of the validity of state legislation was only meagrely considered. Nearly all of the Southern States had extremely stringent laws, making the publication, circulation and even the possession of objectionable literature punishable by severe penalties. Postal officials were not exempted; in Virginia they were specifically included.³³ Nevertheless, the objectionable dissemination continued, and Amos Kendall, postmaster general, who had left the problem largely in the hands of local officers,³⁴ was importuned from many sources to take decisive action. The citizens of Petersburg, Va., on August 8, 1835, petitioned him to "adopt such lawful regulations in his department as may be calculated to prevent" the dissemination of incendiary papers. More elaborate resolutions were adopted at Richmond, and at Charleston it was declared:

"That the postoffice establishment cannot consistently with the Constitution of the United States and the objects of such an institution, be converted into an instrument for the dissemination of incendiary publications, and that it is the duty of the federal government to provide that it shall not be so prostituted, which can easily be effected by merely making it unlawful to transport by the public mail, through the limits of any state, any seditious papers, forbidden by the laws of such state, to be introduced or circulated therein, and by adopting the necessary regulations to effect the object." The resolutions then went on to assert "the right of each state to provide by law against the introduction of a *moral pestilence*, calculated to endanger its existence, and to give authority to their (*sic*) courts adequate to the suppression of the evil."³⁵

³² See above, Chapter IV.

³³ Hurd, *Law of Freedom and Bondage*, vol. ii, pp. 9, 10.

³⁴ See above, p. 105.

³⁵ Niles' Register, vol. xlviii, p. 446. The Richmond resolutions were less elaborate, simply requesting the postmaster general "to use all powers vested in him by law" to prevent the dissemination and delivery of the objectionable matter.

To the Petersburg resolutions, Kendall replied at some length, very conciliatingly, and pleaded that the discretion was not vested in him. "Having no official right to decide upon the character of papers passing through the mails," he said, "it is not within my power by any 'lawful regulation' to obviate the evil of which the citizens of Petersburg complain. If any necessity exists for a supervision over the productions of the press which are transmitted by mail, all will agree that it ought not to be vested in the head of the executive department. . . .

"For the present I perceive no means of relief except in the responsibilities voluntarily assumed by the postmasters through whose offices the seditious matter passes."⁸⁶

In a letter to Gouverneur, the postmaster at New York, who had exercised his discretion in detaining certain publications, Kendall expressed the same views but argued the constitutional problems at greater length. "As a measure of great public necessity," he said, "you and the other postmasters who have assumed the responsibility of stopping these inflammatory papers, will, I have no doubt, stand justified in that step before your country and all mankind." Perhaps also, he suggested, the abolitionists did not have their imagined clear legal right to the use of the mails for distributing insurrectionary papers. When the states became independent, he argued, "they acquired a right to prohibit the circulation of such papers within their territories; and their power over the subject of slavery and its incidents was in no degree diminished by the adoption of the federal Constitution. . . .

"Now," he asked, "have these people a legal right to do by the mail carriers and postmasters of the United States, acts, which, if done by themselves or their agents, would lawfully subject them to the punishment due felons of the deepest dye? Are the officers of the United States compelled by the Constitution and laws to become the instruments and accomplices of those who design to baffle and

⁸⁶ Niles' Register, vol. xlix, p. 7.

make nugatory the constitutional laws of the states,—to fill them with sedition, murder, insurrection,—to overthrow those institutions which are recognized and guaranteed by the Constitution itself?

“And is it entirely certain that any existing law of the United States would protect mail carriers and postmasters against the penalties of the state laws, if they shall knowingly carry, distribute or hand out any of these forbidden papers? . . . It might be vain for them to plead that the postoffice law made it their clear duty to deliver all papers which came by mail. In reply to this argument, it might be alleged, that the postoffice imposes penalties on postmasters for ‘*improperly*’ detaining papers which come by the mail; and that the detention of the papers in question is not improper because their circulation is prohibited by valid state laws. Ascending to a higher principle, it might be plausibly alleged, that no law of the United States can protect from punishment any man, whether a public officer or citizen, in a commission of an act which the state, acting within the undoubted sphere of her reserved rights has declared to be a crime.

“Every citizen may use the mail for any lawful purpose. The abolitionists may have a legal right to its use for distributing their papers in New York, where it is lawful to distribute them, but it does not follow that they have a legal right to that privilege for such a purpose in Louisiana or Georgia where it is unlawful.”⁸⁷ Arguing in this manner, Kendall arrived at his conclusion that the postmasters should use their own judgment and act on their own responsibility.

The postmaster general’s letter has been so fully set forth because it presents, although it by no means solves, all the constitutional questions to which this situation gave rise. The disputed issues were destined never to come before the Supreme Court of the United States for a judicial consideration; they were, however, to be meagrely discussed on the floor of the Senate and twenty years later were to be passed

⁸⁷ Niles’ Register, vol. xlix, p. 9.

upon by the Attorney General in an official opinion. Was the Virginia law, including postal officials, constitutional? Could they be punished for receiving and circulating the prohibited matter when to do so was required by federal law as a part of their official duty? Could a citizen of the state be punished for receiving mail of a certain character? Were the states competent to exclude from their borders publications calculated to stir up disaffection among the slave population?

Attorney General Caleb Cushing was called upon, in 1857, to pass upon some of these questions. The facts of the particular case presented to him were these: The postmaster of Yazoo City refused to deliver a newspaper for the "alleged cause that the same contained matter of which the tendency and object were to produce disaffection, disorder and rebellion among the colored population of the state of Mississippi; and that the delivery of the same by him would constitute a penitentiary crime according to the laws of that state." The removal of the postmaster for malfeasance in office was requested since the act of July 2, 1836, provided punishment for postmasters who unlawfully detained the mail. On the other hand, the laws of Mississippi made it a crime, punishable by not more than ten years' imprisonment, to bring into the state or circulate any printed matter "calculated to produce disaffection among the slave population."⁸⁸

Cushing declared the postal power to be "conferred in very imperfect terms." The clause in the Constitution, he said, provides "for a means or incident without providing for the principal or end. Still we may take it for granted here, that, by this phrase, the states designed to communicate the entire mail power to the United States." But, on the other hand, it is indisputable that "each state has, and must have, jurisdiction as regards the matter of insurrection or treason. To deny this would be to deny to the in-

⁸⁸ 8 Opinions of the Attorneys General, 489 (1857); 5 Stat. L. 80.

habitants of a state the power of self preservation, . . . a right inalienable and imprescriptible."

With this and the completeness of congressional power over the mails as premises, Cushing said the question was as follows: "Has a citizen of one of the United States plenary, indisputable right to employ the functions and the officers of the Union as the means of enabling him to produce insurrection in another of the United States? Can the officers of the Union lawfully lend its functions to the citizens of one of the states for the purpose of promoting insurrection in another state?"

"It is obvious to say that, inasmuch as it is the constitutional obligation of the United States to protect each of the states against 'domestic violence' and to make provisions to 'suppress insurrection'" it cannot be the right or duty of the United States or any of its officers "to promote, or be the instrument of promoting, insurrection in any part of the United States."⁸⁹

Reasoning thus, Cushing concludes "that a deputy postmaster or other citizen of the United States is not required by law to become, knowingly, the enforced agent or instrument of enemies of the public peace, to disseminate, in their behalf, within the limits of any one of the states of the Union, printed matter, the design and tendency of which are to promote insurrection in such state." But at the outset, he said, any settlement of the particular case is involved in "a preliminary question of unsettled fact. The question is whether the contents of the particular newspaper had for their tendency and object to incite insurrection in the state of Mississippi." There are questions also as to the private rights of the addressee and the penal obligations of the deputy postmaster. These are for the courts. They only can "determine the question of the deputy postmaster's

⁸⁹ Mr. Cushing argued (p. 494) that "it cannot be unlawful to detain that which it is unlawful to deliver." But the word "unlawful" in the congressional statute is not to be construed according to state regulations. Whether the detention of the mail is sanctioned must be determined by state standards.

penal liability, whether on the side of the United States or of the state of Mississippi." The attorney general thus comes to no absolutely definite conclusion, but the implication is very strong that there is no federal immunity from prosecution under the state law, and, conversely, that there can be no prosecution under federal law for neglect of duty or malfeasance.

To the same effect, but more clear cut, was the opinion of John Randolph Tucker sent to Governor Wise of Virginia on November 26, 1859.⁴⁰ The laws of Virginia provided that "if a postmaster or deputy postmaster know that any such book or writing [inciting the negroes to rebellion] has been received at his office in the mail, he shall give notice thereof to some justice, who shall inquire into the circumstances and have such book or writing burned in his presence; if it appears to him that the person to whom it is directed subscribed therefor, knowing its character, or agreed to receive it for circulation to aid the purposes of the abolitionists the justice shall commit such person to jail. If any postmaster or deputy postmaster violate this section, he shall be fined not exceeding \$200."

In his opinion, Tucker, as attorney general of the state, held the law to be entirely constitutional. It does not, he said, "properly considered, conflict with federal authority in the establishment of postoffices and postroads. This federal power to transmit and carry mail matter does not carry with it the power to publish or circulate. . . .

"With the transmission of the mail matter to the point of its reception the federal power ceases. At that point the power of the state becomes exclusive. Whether her citizens shall receive the mail matter is a question exclusively for her determination. . . .

"It is true that the postmaster is an officer of the federal government; but it is equally true that he is a citizen of the state. By taking a federal office he cannot avoid his duty

⁴⁰ 26 Cong. Rec., Part 9, Appendix, Part I, p. 4 ff. (53d Cong., 2d Sess.).

as a citizen; and his obligation to perform the duties of his office cannot absolve him from obedience to the law of the Commonwealth. . . .

"I have no hesitation in saying that any law of Congress impairing directly or indirectly this reserved right of the state is unconstitutional, and that the penalty of the state law would be imposed upon a postmaster offending against it, though he should plead his duty to obey such unconstitutional act of Congress."

Tucker's memorandum was sent to Postmaster General Holt, who cited Cushing's opinion (which Tucker had not seen), and ruled against the supremacy of the federal law. "The people of Virginia," said Holt, "may not only forbid the introduction and dissemination of such documents within their borders, but if brought there in the mails they may, by appropriate legal proceeding, have them destroyed. They have the same right to extinguish firebrands thus impiously hurled into the midst of their houses and altars that a man has to pluck the burning fuse from a bombshell which is about to explode at his feet."

It would seem, however, that such reasoning, while careful and persuasive, is erroneous. At the time these opinions were rendered, the absolute supremacy of federal law, when constitutionally enacted, was not accepted without question. It is true that, prior to this, provision had been made for the removal, before trial, of a prosecution arising under the revenue laws of the United States, and also that federal judges should have power to grant writs of *habeas corpus* in all cases of a prisoner or prisoners in jail or confinement "where he or they shall be committed or confined on, or by any authority or law, for any act done, or omitted to be done in pursuance of a law of the United States, or any order, process or decree of any judge or court thereof."⁴¹

To be sure, this was only a means of checking state action, but from the doctrine of federal supremacy it logically follows that it is not within the power of a state to punish

⁴¹ Act of March 2, 1833 (4 Stat. L. 632).

acts done under authority of federal law. At the time the question of incendiary publications was acute, the Supreme Court had not decided the line of cases upholding the right of removal to federal courts and sanctioning the release of officers for acts done in pursuance of federal authority. These cases declared it to be "an incontrovertible principle that the government of the United States may, by means of physical force exercised through its agents, execute on every foot of American soil, the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent. This power to enforce its laws and to execute its functions does not derogate from the power of the states to execute its laws at the same time and in the same places. The one does not exclude the other, except where both cannot be executed at the same time. In that case the words of the Constitution itself show which is to yield. 'This Constitution, and all laws which shall be made in pursuance thereof . . . shall be the supreme law of the land.'"⁴²

And on the basis of this principle, there is no reason to hold that the postal employees could not be punished for distributing the incendiary matter when it was their federal duty so to do. To be sure, as urged by Cushing and Tucker, the United States guarantees each state a republican form of government and protects it against domestic violence, but this does not mean that a law which is passed by Congress to apply uniformly to the whole country, and which may, on account of peculiar local conditions, aid insurrectionary movements in certain of the states, is thereby unconstitutional. The resort of the states is not to the courts, but to Congress for the repeal of the harmful measure. Furthermore, the guarantee does not obligate the United States to insure a state against the occurrence of any violence, but

⁴² *Ex parte Siebold*, 100 U. S. 371 (1879). See also *Tennessee v. Davis*, 100 U. S. 257 (1879), and *Willoughby on the Constitution*, 124.

simply to protect it when the violence is attempted. Since, therefore, the federal laws made criminal the detention of any mail matter, with only such exceptions as Congress might introduce, there was no way in which the states might enforce their laws against incendiary literature, unless they could exclude it absolutely from their borders.

As to this power, there are no judicial precedents, but the carriage of the mails being under federal auspices and Congress having a property right in them, the authority of the states to exclude, if it exists at all, is certainly narrower than that in regard to interstate commerce. As to this, the states may exclude from their borders only such articles as are intrinsically unfit for commerce and unmerchandise. The Supreme Court enumerated, as examples, "rags or other substances infected with the germs of yellow fever, or the virus of small pox, or cattle, or meat or other provisions that are diseased or decayed." These articles "may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human health and life."⁴³ Publications calculated to incite the slaves to rebellion would not fall within this classification. The conclusion, then, must be that in disseminating the incendiary literature, the postal agents acted properly, and that the state laws were inoperative as applied to them. But if the states have a restricted power of exclusion, such as that defined in the Bowman case, it is, in effect, a nullity, since circumstances can hardly be imagined under which its exercise might take place, without delaying the mails, or violating federal statutes which attach penalties for opening the mail and interfering with it while *in transitu*.

There remains the further question whether a state is competent to forbid its citizens to receive certain mail matter, and here also the interstate commerce analogy affords an answer. By a long line of decisions, principally in regard to intoxicating liquors, it has been established

⁴³ Bowman v. Chicago & Northwestern R. Co., 125 U. S. 465 (1888).

that a state may not interfere with a commodity until it has reached the consignee, who has a right to receive shipments from without the state.⁴⁴ If the state forbids possession, no matter how acquired, then the question of receiving becomes academic, since it would be impossible to separate the two acts. So also, if Congress has excluded a commodity from interstate commerce, then the consignee's right to receive this commodity has been taken away, and the state has plenary power.⁴⁵ The same reasoning applies to the receiving of mail matter: the state would be competent to punish only if Congress has forbidden the use of the mails, as is the case, for example, with lottery tickets and obscene literature. But in any event, a law directed against receiving certain mail matter could just as well forbid possession, and as the state has power in the latter case, the distinction is without importance except in so far as the possession is more difficult to detect than the receipt. Certain it is, however, that, as was attempted by the incendiary literature legislation, the state may not punish a man for taking from the mails what the federal government permits to be sent.

This conclusion is applicable to the validity of legislation forbidding the advertisement of intoxicating liquors. The state may not keep out, or prevent the receipt of, such advertisements or journals containing them, when sent through the mails or interstate commerce; it may forbid the sale of such journals if not in their "original packages,"⁴⁶ and if it attempts to penalize the possession of such advertisements, there is no constitutional question so far as the mails are concerned.

The use of the mails may constitute a crime against the state, but the Circuit Court of Appeals for the Fourth Cir-

⁴⁴ See, *inter alia*, *Leisy v. Hardin*, 135 U. S. 100 (1890), and *Rhodes v. Iowa*, 170 U. S. 412 (1897).

⁴⁵ This is the theory of the Webb-Kenyon Act. See my papers, "The Power of the States over Commodities Excluded by Congress from Interstate Commerce," 24 *Yale Law Journal*, 567 (May, 1915), and "State Legislation under the Webb-Kenyon Act," 28 *Harvard Law Review*, 225 (January, 1915).

⁴⁶ See the reasoning in *State v. Delaye*, 68 So. 993 (Ala., 1915).

cuit has gone much farther than previous decisions and in a recent case declared: "It makes no difference that the United States Mail was used for the solicitation [of orders for intoxicating liquors]. The federal government does not protect those who use its mails to thwart the police regulations of a state made for the conservation of the welfare of its citizens. The use of the mail is a mere incident in carrying out the illegal act, and affords no more protection in a case like this than a like use of the mails to promote a criminal conspiracy, or to perpetrate a murder by poison, or to solicit contributions of office holders in violation of the civil service law, or to obtain goods under false pretenses."⁴⁷

In *Adams v. The People*⁴⁸—the case probably meant but not cited by the last clause of the quotation—there was an indictment for obtaining money under false pretenses, although the defendant was a resident of Ohio and had never been in New York. So also, in cases referred to by the Circuit Court of Appeals, the solicitation through the mails of orders for intoxicating liquors has been punished where the matter was mailed and received within the limits of the state and there was no interstate commerce involved.⁴⁹ But the Supreme Court decisions cited by the Circuit Court of Appeals simply hold that Congress may make the use of the mails a crime when in furtherance of a purpose to violate federal laws and are obviously not precedents for sustaining the West Virginia legislation.⁵⁰

Now, the *sine qua non* of forbidding solicitation by means of the postoffice is that the sale of the intoxicating liquor is itself a crime; otherwise the state could have an unrestrained power to prescribe the purposes for which the mails might be used. The Circuit Court of Appeals evidently reasoned on this basis and considered as constitutional the

⁴⁷ *West Virginia v. Adams Express Co.*, 219 Fed. Rep. 794 (1915).

⁴⁸ 1 N. Y. 173 (1848).

⁴⁹ *Hayner v. State*, 83 Ohio St. 178 (1910). See also *Zinn v. State*, 83 Ark. 273, 114 S. W. 227 (1908).

⁵⁰ *U. S. v. Thayer*, 209 U. S. 39 (1908), and *In re Palliser*, 136 U. S. 257 (1890).

section of the state law which provides that "in case of a sale in which a shipment or delivery of such liquors is made by a common or other carrier, the sale thereof shall be deemed to be made in the county wherein the delivery thereof is made by such carrier to the consignee, his agent, or employee." The Court held that such a regulation was sanctioned by the Webb-Kenyon Act,⁵¹ although admittedly invalid if not thus justified. This presents a question that is beyond the purview of the present study, but it is obvious that if the sales could be made, then the solicitation could not be made a crime; and it may be added, parenthetically, that the Court probably erred in holding that the sales were forbidden.

The case nearest in point—*Rose Co. v. State*⁵²—is not cited by the Circuit Court's opinion. The defendant corporation in Tennessee mailed circulars advertising liquors to residents of Barton County, Ga. The Georgia law forbade solicitations where it was unlawful to sell, but the Supreme Court of Georgia held that shipments could be made from without the state under the protection of the commerce clause, and it could not, therefore, be a crime to use a federal agency in furtherance of a purpose that was sanctioned by the Federal Constitution.

It may be said, then, that the use of the mails may be penalized only when in furtherance of a purpose that is unlawful; nor can it be argued—as was done with considerable force by the late James C. Carter against the exclusion of lottery tickets from the mails⁵³—that the state may punish only when the purposes are *mala in se* and not when merely *mala prohibita*. If the state has the power, it may define "unlawful," but punishment cannot take place if the act

⁵¹ 37 Stat. L. 699. For a further discussion of this point see my paper, "Unlawful Possession of Intoxicating Liquors and the Webb-Kenyon Act," 16 Columbia Law Review, 1 (1916).

⁵² 133 Ga. 353, 65 S. E. 770, 36 L. R. A. (n. s.) 443 (1909), and note, which says that the case is one *primae impressionis*. It should be said that the decision in the Court of Appeals was *contra*. See 4 Ga. App. 588, 62 S. E. 117 (1908).

⁵³ In re Rapier, 143 U. S. 110 (1892).

sought to be effected by the use of the mails is permitted by state law, or if the inhibition is invalid, as is, it would seem, the case with the West Virginia legislation. Finally, it is difficult to see how the state may forbid anything but direct solicitation. A magazine or newspaper proprietor who publishes the advertisements does not use the mails for the purpose of consummating a crime, and the advertiser does not use the mails at all. The solicitation, therefore, must be direct.⁵⁴

⁵⁴ To make the record complete it should be added that the federal courts have exclusive jurisdiction of all offenses embraced by statute, committed in a postoffice owned by the United States or jurisdiction over which has been ceded by the state. *Battle v. U. S.*, 209 U. S. 36 (1908). But the fact that a train is engaged exclusively in carrying the United States mail does not preclude the jurisdiction of a state court of a prosecution for the murder of an engineer, committed by derailing the train. *Crossley v. California*, 168 U. S. 640 (1898).

CHAPTER VI

THE EXTENSION OF FEDERAL CONTROL OVER POSTROADS

Federal Ownership of Railroads.—In an address at Indianapolis on May 30, 1907, President Roosevelt discussing the necessity for further congressional regulation of railway companies, declared that, "in so far as the common carriers also transport the mails, it is, in my opinion, probable that whether their business is or is not interstate, it is to the same extent subject to federal control, under that clause of the Constitution granting to the national government power to establish postroads, and therefore by necessary implication power to take all action necessary in order to keep them at the highest point of efficiency."¹

The placing of such a construction upon the postroads clause aroused a storm of criticism, but, in the main, President Roosevelt was correct in his assertion of congressional authority. Municipal streets used by mail carriers or wagons are postroads and federal control exists to the extent of insuring safe passage of the mail and prohibiting private competition; by the rural free delivery system, moreover, state wagon roads are under federal authority to the same extent. That much has been made evident by the preceding discussion.

As to common carriers between the states, congressional regulation has been very largely based upon the commerce clause of the Federal Constitution, and the transportation

¹ The Roosevelt Policy, vol. ii, p. 486. In his Provincetown address (August 20, 1907) President Roosevelt returned to the same theme, saying: "I believe, furthermore, that the need for action is most pressing as regards those corporations which, because they are common carriers, exercise a quasi-public function; and which can be completely controlled, in all respects, by the federal government by the exercise of the power conferred under the interstate commerce clause, and, if necessary, under the post-road clause of the Constitution." Ibid., p. 564.

of the mails has been a secondary, not primary, ground to justify the authority exerted. This commercial power does not extend to intrastate undertakings, but if these were concerned with furnishing postal facilities they could be brought under federal control. This doctrine, however, should be carefully qualified so as not to assert a right in Congress to assume general supervision, for example, of municipal traction companies, an incidental function of which is to carry the mails. The control could be exerted only so far as was reasonably necessary to insure the safe, speedy, and unobstructed transportation of government property.

This control, as the *Debs*² case made clear, is, in the case of interstate carriers at least, and by parity of reasoning in the case of intrastate undertakings also, not confined to mere legislative rules, enforceable in the courts, but the executive power may remove obstructions to the carriage of the mails. The national government is charged "with the duty of keeping those highways of interstate commerce free from obstruction, for it has always been recognized as one of the powers and duties of a government to remove obstructions from the highways under its control." On this power rests, in large part, at least, the act of October 1, 1888,³ providing for arbitration between railroad companies and their employees and subsequent acts for the same purpose. The full power has not yet been exerted; it extends to the compulsory settlement of such disputes (subject to the limitations of the Thirteenth Amendment),⁴ and to the enforcement by federal authority of such regulations as may be necessary to remove obstructions and insure the carriage of the mails without delay, even in the case of streets within a town and with reference to municipal traction companies.

It is no longer open to doubt that the federal government, under its right of eminent domain, upon the payment of adequate compensation judicially determined, may compel service from railroads by which existing terms for the car-

² 158 U. S. 564 (1895).

³ 25 Stat. L. 501.

⁴ See 2 Willoughby on the Constitution, 855.

riage of the mails may have been deemed unsatisfactory. This may be done either by assuming the temporary management of the roads for such a purpose, or by enforcing criminal provisions against obstructing or delaying the mails. While such a power has not been exercised, it certainly exists.⁵

But the Senate Committee which in 1874 declared that the government could thus compel the transportation of the mails, went still further and maintained that Congress could "take absolutely, on paying just compensation therefor, without the consent either of the owner or of the state within which such road may be, any railroad, its rolling stock and equipments, within the United States for the public use and transportation over the same of the United States mails,"—an advanced position for this period when Congress had as yet attempted slight regulation of the railroads.

It should require but little argument, I think, to show that if Congress decides to nationalize the railways of the country it may constitutionally do so under its power to establish postroads. Federal charters to railroads and bridge companies have been pitched upon the postal, commercial, and war powers; they have granted rights of way through the states, immunity from taxation, powers of eminent domain, and the right of resort to the federal courts on the ground of federal citizenship. Congress has, moreover, the right of eminent domain even for patriotic purposes,—to preserve the Gettysburg battlefield,—a much more remote public purpose than that of establishing postal facilities under the specific authorization in the Constitution.⁶

In *Osborn v. The Bank of the United States*,⁷ it was urged upon the Supreme Court that the bank was not an instrument of the government and a distinction was drawn between it and an agency for which provision was made in

⁵ 43d Cong., 1st Sess., Senate Rept. No. 478.

⁶ *California v. Pacific Railroad Companies*, 127 U. S. 1 (1887); *U. S. v. Gettysburg Electric Co.*, 160 U. S. 668 (1896).

⁷ 9 Wheat. 738 (1824).

the Constitution. "The postoffice is established by the general government," said counsel. "It is a public institution. The persons who perform its duties are public officers. No individual has or can acquire any property in it. For all services performed a compensation is paid out of the national treasury; and all money received upon account of its operations is public property." The business "is of a public character and the charge of it expressly conferred upon Congress by the Constitution."⁸ This distinction between the public nature of postal facilities and the private character of much of the business done by the bank was urged to show that the latter was subject to taxation by the state.

To this argument Chief Justice Marshall replied that if the premises were true, the conclusion would be inevitable. But there was a political connection between the bank and the government and "Congress was of the opinion that these faculties [of doing private business] were necessary to enable the bank to perform the services which are exacted from it, and for which it was created. . . . That the exercise of these faculties greatly facilitates the fiscal operations of the government is too obvious for controversy: and who will venture to affirm that the suppression of them would not materially affect these operations, and essentially impair, if not totally destroy, the utility of the machine to the government?" If the private business engaged in has the result of making the corporation "a more fit instrument for the purposes of the government than it otherwise would be," then "the capacity to carry on this trade is a faculty indispensable to the character and objects of the institution."

There can be no question of the right of the federal government itself to construct highways for the transportation of the mail and to charge tolls for their use; nor can there be any doubt of its power to own and operate carriers, and incidentally to engage in business of a private nature if this increases the efficiency of the governmental agency.

⁸ 9 Wheat. 785 (1824).

Even the fact that these private undertakings, disassociated from the carriage of the mails, would be by far the most important, would make no difference, according to the rule as announced by Chief Justice Marshall. On this theory, moreover, can be justified the assumption by the federal government of the functions of a bank and common carrier, through the postal savings and money order systems, and the parcel post, even though these activities can also be supported as proper elements of a postal power as it is interpreted in other countries.

If, therefore, the federal government is competent to establish postal facilities and use them for ancillary yet helpful purposes, there is no reason why it may not exercise its power of eminent domain and take possession of any or all agencies now used in the transportation of the mails, upon the payment of just compensation; own and operate these agencies, use them to carry the mails, and to perform all other functions which would "greatly facilitate the fiscal operations of the government." In this would, of course, be included the smaller power of creating a corporation, perhaps owned in part by the government, to take over and operate the railroads of the country for the same purposes. The connection between such a corporation and the government would be political and public as Marshall pointed out, but it would be created to carry out a power specifically mentioned in the Constitution, and its public nature would therefore be much more apparent. There is thus an error of understatement when it is urged that "no valid distinction can be drawn between the vital necessity of the right to trade in money to a fiscal instrumentality of the government, and the right to trade in transportation to a transportation instrumentality of the government."⁹

It is an arguable proposition that such a purpose could be accomplished under the commercial power which is simply that of "regulation." By many the opinion is held that this of itself is sufficient to give Congress the right to compel

⁹ Farrar, *The Post Road Power* (Hearings before Committee on Interstate Commerce, United States Senate, 62d Congress, p. 1498 ff.).

industrial corporations doing an interstate business to secure federal charters. The constitutionality of a law to compel interstate railroads to incorporate under the commerce clause is even less doubtful, and the Supreme Court has upheld the exercise of the commercial power in condemning the property of a state corporation organized to improve navigation, just compensation including the value of the franchise which was destroyed.¹⁰ Federal incorporation, then, may be required on the ground that it is necessary for the efficient regulation of the carriers. On the other hand, the postal clause gives Congress the right to establish instrumentalities for the transportation of the mails, and the assumption of control or ownership under this grant of power is more surely within the rule as laid down by Marshall in *Osborn v. The Bank of the United States*.

In 1792 the proposal was made in Congress that the proprietors of mail stages be permitted to carry passengers, but the motion was lost, on the ground that under the postal clause Congress did not provide the necessary authority.¹¹ It is true, also, that the framers of the Constitution did not, because they could not, contemplate the taking over by Congress of the railways of the country. And, as the preceding discussion has attempted to show, during the early days of legislative activity under the postroads clause, the consent of the states was required for construction within their borders, and they acceded in one form or another to several of the acts granting federal charters.¹² But, as the Supreme Court of the United States has said in language already quoted, the powers of Congress "are not confined to the instrumentalities of commerce or of the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country." This, coupled with the right of eminent domain, is, it is submitted, sufficient to enable the national government, either

¹⁰ *Monongahela Navigation Co. v. U. S.*, 148 U. S. 312 (1893).

¹¹ *Annals of 2d Congress*, pp. 303-309.

¹² See Prentice, *Federal Power over Corporations and Carriers*, p. 152.

directly or through a federally chartered corporation, to take over and operate the railroads of the country for the carriage of the mails, with the power of engaging in the transportation of freight or passengers, to the extent that Congress may desire.¹³

Postal Telegraphs and Telephones.—The case last cited is ample authority for Congress to take over and operate the telegraph and telephone systems of the country, for the Supreme Court made its pronouncement in upholding the act of July 24, 1866,¹⁴ "to aid in the construction of telegraph lines, and to secure to the government the use of the same for postal, military and other purposes." The act, among other things, gave companies complying with its terms the right to erect their poles and string their wires along any military or post road, and the Supreme Court declared void a state statute which attempted to give exclusive rights to a local company.

By the third section of the congressional act, it was provided that "the United States may, at any time after the expiration of five years from the date of the passage of this act, for postal, military or other purposes, purchase all the telegraph lines, property and effects of any or all of said companies at an appraised value, to be ascertained by five competent, disinterested persons, two of whom shall be selected by the postmaster general of the United States, two by the company interested, and one by the four so previously selected." The United States therefore reserved to itself the power which it would otherwise have had,—that of eminent domain in respect to telegraph facilities. In his report for 1913, the postmaster general said:

"A study of the constitutional purposes of the postal establishment leads to the conviction that the Post Office De-

¹³ *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S. 1 (1878). Congress may authorize the secretary of war to lease upon terms agreed upon any excess of water power which results from the conservation of the flow of a river, and the works which the government may construct. *U. S. v. Chandler-Dunbar Water Power Co.*, 229 U. S. 53 (1913).

¹⁴ 37 Stat. L. 560.

partment should have control over all means of the communication of intelligence. The first telegraph line in this country was maintained and operated as a part of the postal service, and it is to be regretted that Congress saw fit to relinquish this facility to private enterprise. The monopolistic nature of the telegraph business makes it of vital importance to the people that it be conducted by unselfish interests, and this can be accomplished only through government ownership." If Congress decides to take over these facilities, its action will be clearly within the postal power.¹⁸

¹⁸ For an account of proposals in Congress to take this action, a history of its recommendation by successive postmasters general, and much valuable statistical information concerning the operation of the American privately owned, and the foreign publicly owned, telegraph and telephone systems, see "Government Ownership of Electrical Means of Communication," 63d Congress, 2d Sess., Senate Doc. No. 399.

CHAPTER VII

THE EXTENSION OF FEDERAL CONTROL THROUGH EXCLUSION FROM THE MAILS

It has already been indicated that, while the postal power of Congress is plenary, extending to the classification and exclusion of articles presented for transmission through the mails, it is not without limits; that its exercise is restricted by provisions found in the Constitution itself,—the guarantees of a free press and immunity from unreasonable searches and seizures. There is, moreover, a further important limitation in that an arbitrary refusal of postal facilities would seem to be a denial of due process of law.

The Supreme Court of the United States has not yet been called upon to set any limit to congressional action under this clause; it has thus far upheld every law restricting the use of the postoffice. But it should be remembered in the discussion which follows that all existing exclusions from the mails can be justified as partaking of the nature of police regulations; the prohibited articles are either inherently injurious, inimical to the health, safety and well being of recipients, or the use of the mails is denied because it would be in furtherance of a design that is condemned by moral considerations or is against public policy.

That this *Index Expurgatorius* will be extended may be taken for granted. It is in the nature of police regulations that they expand more inclusively and rigorously. For example, in 1912 Congress excluded from the mails moving picture films of prize fights.¹ At the third session of the Sixty-third Congress, moreover, bills were introduced and urged to deny absolutely the use of the mails to any person who, in the opinion of the postmaster general, "is engaged

¹ 37 Stat. L. 240.

or represents himself as engaged in the business of publishing" any books or pamphlets of an indecent, immoral, scurrilous or libelous character. No letter, packet, parcel, newspaper, book or other thing, said one bill, "sought to be sent through the postoffice by or on behalf or to or on behalf of such person shall be deemed mailable matter, and the postmaster general shall make the necessary rules and regulations to exclude such nonmailable matter from the mails."² The proposed legislation was aimed at certain publications devoted to the unrestrained, defamatory and often indecent criticism of particular religious denominations and their clergy.

The constitutionality of this legislation, however, is open to serious doubt. There can, of course, be no question as to the impairment of religious freedom, for, while this requires freedom of attack, it cannot "justify the violation of public order and common decency"; or, as put by another authority, "the prohibition does not prevent Congress from penalizing the commission of acts, which, although justified by the tenets of a religious sect, are socially or politically disturbing, or are generally reprobated by the moral sense of civilized communities."³ Nor is the objection that the freedom of the press would be impaired, since, admitting that a denial of postal facilities would be an impairment of the liberty of publication, the federal guarantee does not include the right to publish scurrilous or libelous utterances on matters of private concern; or, to take Hamilton's test, there is no publication of truth, with good motives and for justifiable ends.⁴

If the proposed legislation simply made such matter non-mailable and penalized any attempt to use the postoffice for its carriage, it would probably be free from objection. But under the bill quoted above, if it was established that a

² See *Exclusion of Certain Publications from the Mails*, p. 3 ff. (Hearing before the Committee on the Postoffice and Postroads, House of Representatives, 63d Cong., 3d Sess.).

³ Freund, *Police Power*, p. 509; 2 Willoughby on the Constitution, 841.

⁴ Schofield, *Freedom of the Press in the United States*, p. 90.

person made a practice of sending such matter through the mails, the postmaster general would have the absolute authority arbitrarily to deny him facilities for *all* his mail matter, much of which would be admittedly innocuous; and whether, if the objectionable practices were suspended, the person would again be permitted to make use of the governmental agency, would depend on the discretion of the postmaster general. This official's authority would, in effect, be to punish for acts not made criminal by Congress. Such legislation would for this reason seem unconstitutional as well as ill-considered.

But this exclusion is in a class by itself. It is an attempt to reach effectively an evil over which there is admittedly some federal control, for Congress may prevent the transmission of scurrilous papers. The objection is to the method of exercise rather than to the existence of the power. Of a different character is the strongly urged proposal that congressional control of the mails may be used as a valid means to compel the performance or non-performance of certain acts by persons, over whom there exists no direct federal authority. In other words, it is contended that Congress has a plenary and arbitrary power to determine who shall use the mails and what articles shall be carried, and therefore may impose any antecedent conditions, no matter how onerous or remote, upon the enjoyment of postal facilities. With the ever increasing frequency and importance of problems demanding a solution by the federal government in the absence of effective, and in some cases even attempted, settlement by the states, Congress is under the necessity of casting about for indirect methods of exerting control, since direct action would be unconstitutional. The use for this purpose of the taxing and commercial powers has in some instances been made, and in others is very strongly urged. It is also argued that Congress may refuse corporations, to whose size, organization, or activities, it objects, the right to sue in federal courts and that national banks may be ordered not to receive their

deposits. In asking, therefore, whether it is constitutional for Congress to exert such indirect control under the cloak of regulating the mails, we will merely consider one phase of the larger subject of indirect government.

Such an exercise of power over the mails has been advocated to secure corporate publicity. "Congress," says one who is in favor of such extension of federal control, "by regulating the use of the mails and channels of interstate commerce, may compel every corporation engaged in any business, *whether interstate or not*, to give publicity to its corporate affairs, by legislation denying the use of the mails and the instruments of interstate commerce for the transmission of any matter concerning the affairs or business of any corporation that fails to make and file reports of the fullest nature concerning its organization and business, such, for example, as are already exacted from interstate carriers under the Interstate Commerce Act. Such legislation would be valid and enforceable."⁶

It has been suggested in Congress⁶ that an effective punitive method of dealing with monopolistic corporations would be to deny them postal facilities.⁷ If such corporations were violating the Sherman Act or were otherwise outlawed by valid legislation, Congress would have the right to deny them the use of the mails, since it would be absurd for the general government to aid, through its instrumentalities, persons or corporations violating laws which it had passed. An illustrative case is afforded by the provision of the Panama Canal Act of August 24, 1912, which says that no

⁶ Pam, "Powers of Regulation Vested in Congress," 24 Harvard Law Review, 77 (December, 1910).

⁶ As stated by Senator Newlands: "Congress can prohibit the use of the mails by any organization which it considers unlawful or injurious to the public welfare. It can, therefore, declare that any combination organized for the purpose of monopolizing the manufacture, production or sale of any article of commerce, or for the purpose of preventing competition is illegal, and can forbid and prohibit the use of the mails of the United States in aid of such business." 33 Cong. Rec. (App.), p. 675. See also Remarks of Lanham, 33 Cong. Rec., p. 6324.

⁷ This was rejected by a House Committee on the ground that it was inadequate. See 56th Cong., 1st Sess., House Rept. No. 1501.

vessel owned by any company doing business in violation of any of the acts of Congress relating to interstate commerce "shall be permitted to enter or pass through said canal."⁸

But it is a different proposition to urge that Congress may deny the use of the mails in order to compel corporate publicity, when, if the legislation directly commanded compliance, it would be clearly *ultra vires*. Thus, the Pujo Money Trust Committee proposed "that Congress prohibit the transmission by the mails or by telegraph or telephone from one state to another of orders to buy or sell or quotations or other information concerning transactions on any stock exchange, unless [among other conditions] such exchange shall (1) be a body corporate of the state or territory in which it is located."⁹ This proposal was based upon the conclusion of a majority of the committee that "Congress has power to prevent the use of the mails to disseminate

⁸ 37 Stat. L. 560 (sec. 11). See also Mr. Adamson's bill, H. R. 9576, 63d Cong., 2d Sess. (December 1, 1913).

⁹ Majority Report of the Committee Appointed to Investigate the Concentration of Control of Money and Credit (February 28, 1913), p. 162. A bill embodying these recommendations is given on p. 170. It denies the use of the mails to any stock exchange, "unless such exchange has been incorporated under the laws of the state or territory at which its business is conducted, or unless the charter and by-laws of such exchange or the law under which it is organized shall contain regulations and prohibitions satisfactory to the Postmaster General safeguarding the transactions of such exchange, the character of the securities dealt in thereon, the genuineness of the quotations thereof, and all other information concerning such transactions that is to be carried through the mails, and by telegraph and telephone beyond the limits of the state of the organization of such exchange against fraud and deceit in the following particulars": These require publicity as to the assets and stock issues of a corporation before its securities may be listed; an annual report by the corporation whose securities are listed, to the secretary of the exchange and the postmaster general, giving a detailed statement of receipts, expenses, net earnings, salaries and commissions paid to officers or directors, etc.; prohibition of arbitrary action by a stock exchange in striking securities from its list, of artificial manipulation of securities, of hypothecation of securities purchased on a margin, of "short-selling," etc. The bill also contains many requirements as to publicity. For a discussion of the economic features of the Pujo Committee's proposals, see Regulation of the Stock Exchange, p. 585 ff. (Hearings before the Committee on Banking and Currency, United States Senate, 63d Cong., 2d Sess.).

quotations or other information concerning transactions on stock exchanges whose facilities are used for purposes of gambling and price manipulation, and that exercising its wide choice of means to that end, it may prohibit the transmission through the mails of any information relating to transactions on exchanges refusing submission to regulations reasonably adapted to preventing the objectionable practices."¹⁰

The question arises whether such an exclusion would not violate the freedom of the press, since newspapers and other publications could not use the mails if they contained any information, however harmless and valuable, concerning any transactions (to which Congress might have no objection) of the exchange which has refused to accept regulations which the general government had no power directly to impose. Newspapers would be unable to circulate truth on matters of public concern if the published information as to stock quotations, although harmless in its nature, concerned an institution whose practices Congress was indirectly attempting to check. If the law were carefully confined to the prohibition of the circulation of publications which contained matter relating to gambling transactions, there would be no abridgment of the guarantee of the First Amendment. The exclusion would be similar to that of lottery advertisements, or matter designed to aid in defrauding recipients. But as proposed by the Pujo Committee, the law would, at least in part, if not as a whole, operate as an abridgment of the freedom of the press.

Apart from this consideration, however, the theory of the law, differently stated, is that Congress, under its power to exclude from the mails gambling contracts and matter designed to defraud recipients, may go farther and exclude harmless matter because this seems a necessary and adequate means of compelling the exchanges to take out state charters, a concession thought by Congress to be desirable

¹⁰ Majority Report, p. 122.

in order to prevent the gambling and other harmful practices, over which there is no direct national control.

Still other proposals would extend federal authority in a similar manner. It is urged, for example, that Congress prohibit the use of the mails by fire insurance companies which at present are, by means of the postoffice, able to do business in states where they could not, if they used local agents.¹¹ And to give a third example, it was argued that an efficient means of prohibiting trading in cotton futures would be to deny the use of the mails for the furtherance of such transactions.¹² The extent to which the Supreme Court has thus far recognized in Congress authority of this character, is only to sanction the refusal to lend federal aid, by furnishing postal facilities to the furtherance or consummation of gambling and fraudulent schemes.

One measure of a character somewhat analogous to those proposals which we have been considering, has, however, already been sustained by the Supreme Court of the United States. I refer to the recent so-called "Newspaper Publicity Law" which requires publications entered as second-class matter (with a few exceptions) to furnish the postoffice department with, and publish, a sworn statement giving the names and addresses of the owners, editors, and business managers, and, in the case of daily newspapers, circulation figures. It is provided that "any such publication shall be denied the privileges of the mail if it shall fail to comply with the provisions of this paragraph within ten days after notice by registered letter of such failure."¹³

¹¹ See S. 5664, 63d Cong., 2d Sess. (May 26, 1914).

¹² See Regulation of Cotton Exchanges, p. 310 ff. (Hearings before the Committee on Agriculture, House of Representatives (April, 1914)). See also 63d Cong., 2d Sess., House Rept. 765. It should be pointed out that the "trading in futures" that it was desired to prohibit was in the nature of gambling contracts and had come under the ban of local laws.

¹³ 37 Stat. L. 553. A separate and concluding paragraph provides: "That all editorial or other reading matter published in any such newspaper, magazine or periodical, for the publication of which money or other valuable consideration is paid, accepted, or promised, shall be plainly marked 'advertisement.' Any editor or publisher printing editorial or other reading matter for which com-

As claimed in the defendants' brief, when the law went before the Supreme Court, Congress had, in effect, attempted "to regulate journalism." Relying upon its power over the postoffice, Congress had threatened those publications which enjoy second-class rates with a denial of this privilege should they refuse to comply with the conditions; and it was, moreover, made a crime to continue to use the mails and violate the stipulation that all reading matter for the publication of which a valuable consideration is received, "shall be plainly marked 'advertisement.'" Such regulations, without any reference to the use of the mails, would be obviously outside the constitutional power of Congress.

By a narrow, but nevertheless a convincing line of reasoning, the Supreme Court, through Chief Justice White, was able to justify the law without being put to the necessity of making any definite declaration as to the limits to which Congress may go in its exercise of what, lacking a better phrase, we may call "indirect regulation under the postal power."

The Court's opinion shows that in the classification of mail matter there has been no attempt at uniformity and that periodical publications have enjoyed special favors by reason of legislative adherence to what has been described as the "historic policy of encouraging by low postal rates the dissemination of current intelligence."¹⁴ It is shown that as a condition precedent to being "entered as second class mail matter" and enjoying the low rates which are maintained at a loss, the government demands an answer to a score of questions concerning ownership, editorial

pensation is paid, accepted, or promised, without so marking the same, shall, upon conviction in any court having jurisdiction, be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500)."

¹⁴ Report of the Commission on Second-Class Mail Matter, p. 143. In his message of February 22, 1912, transmitting this report to Congress, President Taft said: "The findings of the commission confirm the view that the cost of handling and transporting second-class mail matter is greatly in excess of the postage paid, and that an increase in the rate is not only justified by the facts, but is desirable."

direction, advertising discrimination, specimen copies, and circulation. To the Third Assistant Postmaster General is given the authority of accepting or rejecting applications of entry at the second-class rate.¹⁵ The Supreme Court simply considered the law as laying down new conditions, compliance with which will continue the right "to enjoy great privileges and advantages at the public expense." In its opinion the Court says:

"As the right to consider the character of the publication as an advertising medium was previously deemed to be incidental to the exercise of the power to classify for the purpose of the second class mail, it is impossible in reason to perceive why the new condition as to marking matter, which is paid for as an advertisement, is not equally incidental to the right to classify.

"And the additional exactions as to disclosure of stockholders, principals, creditors, etc., also are clearly incidental to the power to classify as are the requirements as to disclosure of ownership, editors, etc., which for so many years formed the basis of the right of admission to the classification. We say this because of the intimate relation which exists between ownership and debt. . . .

"Considered intrinsically, no completer statement of the relation which the newly exacted conditions bear to the great public purpose which induced Congress to continue in favor of the publishers of newspapers at vast public expense the low postal rate as well as other privileges accorded by the second class mail classification, can be made than was expressed in the report of the Senate Committee stating the intent of the legislation—that is, to secure to the public 'in the dissemination of knowledge of current events' by means of newspapers, the names, not only of the apparent, but of what might prove to be the real and substantial owners of the publications and to enable the public to know whether the matter which was published was

¹⁵ Postal Laws and Regulations of 1913, p. 223.

what it purported to be, or was in substance a paid advertisement.

"We repeat that in considering this subject we are concerned not with any general regulation of what should be published in newspapers, nor with any condition excluding from the right to resort to the mails, but we are concerned solely and exclusively with the right on behalf of the publishers to continue to enjoy great privileges and advantages at the public expense, a right given them by Congress upon condition of compliance with regulations deemed by that body incidental and necessary to the complete fruition of the public policy lying at the foundation of the privileges accorded."¹⁰

This decision thus applies simply to the suspension of second class privileges and not to any general denial of the use of the mails. It is significant, moreover, that the Court expressly refused assent to the contention of the government, which as paraphrased in the opinion, was that the law merely "imposes conditions necessary to be complied with to enable publishers to participate in the great and exclusive privileges and advantages which arise from the right to use the second-class mail," but that even if "the provision be given the significance attributed to it by the publishers, it is valid as an exertion by Congress of its power to establish postoffices and post roads, a power which conveys an absolute right of legislative selection as to what shall be carried in the mails, and which, therefore, is not in anywise subject to judicial control even though in a given case it may be manifest that a particular exclusion is but arbitrary because resting on no discernible distinction nor coming within any discoverable principle of justice or public policy."

The Court, however, emphatically refused to accept this view, saying that "because there has developed no necessity of passing on the question, we do not wish even by the remotest implication to be regarded as assenting to the broad contentions concerning the existence of arbitrary

¹⁰ *Lewis Publishing Co. v. Morgan*, 229 U. S. 288 (1913).

power through the classification of the mails, or by way of condition, embodied in the proposition of the government which we have previously stated."

The Supreme Court has, however, permitted Congress, in the exercise of its taxing power, and less noticeably in its control of interstate commerce, to accomplish ends which were not included in the enumerated delegations of the Constitution. Thus, the tax on state bank notes which made their issue unprofitable was upheld on the ground that "the judiciary cannot prescribe to the legislative department of the government limitations upon the exercise of its *acknowledged* powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected."¹⁷ Such a position in this case, however, was easily justified on the ground that Congress had the power to stop altogether the issue of the state bank notes if it thought that this course was necessary in order to provide an effective currency system, and the case thus loses much of its apparent importance.¹⁸

More illustrative, perhaps, of the plenary power of Congress with respect to the raising of a revenue, and impossible to justify on such a ground, is the decision upholding a tax upon oleomargarine so heavy that it can only be manufactured at a loss. Thus, unable directly to control manufacture, Congress has achieved the same end through the exercise of its taxing power. The Supreme Court said:

The argument "when reduced to its last analysis comes to this: that because a particular department of the government may exert its lawful powers with the object or motive of reaching an end not justified, therefore it becomes the duty of the judiciary to restrain the exercise of a lawful power whenever it seems to the judicial mind that such

¹⁷ *Veazie v. Fenno*, 8 Wall. 533 (1869). Italics mine.

¹⁸ In *Edye v. Robertson*, 112 U. S. 580 (1884) the Supreme Court said that the imposition "was upheld because a means properly adopted by Congress to protect the currency which it had created," and the tax was not, therefore, subject to the ordinary rules.

lawful power has been abused. But this reduces itself to the contention that under our constitutional system, the abuse by one department of the government of its lawful powers is to be corrected by the abuse of its powers by another department."¹⁹

Such reasoning is, it appears, final, although it goes farther than the Bank Note Case which declared that "there are indeed certain virtual limitations arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power [that of taxation] if so exercised as to impair the separate existence and independent self government of the states or if exercised for ends inconsistent with the limited grants of power in the Constitution."²⁰ However, although with more guarded language, the Court, even in the McCray case, intimated that a judicial veto might attach to measures which on their face bore evidence of not being tax laws at all, but were transparent in their purpose to control subjects not within the power of Congress. Such a law has not come before the Supreme Court.

Not so striking, but nevertheless important illustrations of this "nullification by indirection"²¹ are to be found in the interstate commerce legislation of recent years. Congress has excluded lottery tickets from interstate commerce on account of their harmful effect on recipients;²² it has

¹⁹ McCray v. U. S., 197 U. S. 27 (1903).

²⁰ Veazie v. Fenno, above. The distinction has sometimes been drawn between *acknowledged* powers and *implied* powers of Congress. For example, the power to tax and to regulate interstate commerce is granted in the Constitution, while that to exclude from the mails is implied from the postal clause. From this it is argued that Congress may be limited in its indirect control under an *implied* power when the same objection would not apply to the exercise of an *acknowledged* power. (See the brief of James M. Beck in the newspaper publicity case, printed in Cong. Rec., December 11, 1912.) But this distinction has never been sanctioned by the Supreme Court of the United States.

It is proper, however, in this connection to point out the extraordinary nature of the taxing power, which is, in Marshall's phrase, the "power to destroy."

²¹ The term is Mr. J. M. Beck's. See his brief in Lewis Publishing Co. v. Morgan, *supra*, and his article, "Nullification by Indirection," 23 Harvard Law Review, 441.

²² Champion v. Ames, 188 U. S. 321 (1902).

assumed a control over the manufacture of food products by establishing standards of purity which must be met before the articles may begin an interstate journey.²³ The Mann White Slave Act extends federal control to immorality in the states, and in its decision upholding this law, the Supreme Court frankly admits that the means exerted "may have the quality of police regulations."²⁴ Proposals are now made to control manufacturing and trading companies, whether interstate or not, by compelling them to take out federal charters and modify their business practices (over which Congress has no direct control) in accordance with federal regulations before they will be permitted to enjoy the facilities of interstate commerce. It is most strongly urged that the national legislature has the power to improve labor conditions within the states, the most desired manifestation being a law putting articles made by children under specified ages in the same class with lottery tickets and impure foods.

Up to this time, however, legislation under the commerce clause has developed little necessity for passing upon the question whether these ultimate purposes may be considered by the courts, for the indirect control effected by the various acts is purely incidental in character. It is quite proper for Congress to build up an *Index Expurgatorius* just as it has done in the case of the mails, and to say that commerce shall not be "polluted" by the carriage of obscene literature, impure food, and made an agency to promote immorality. In every case, the power has been exerted on *things*, not on *persons*, and only once has there been even an apparent departure from this theory. Here the Supreme Court by a forced interpretation of the statute destroyed much of its force. I refer to the "commodities clause" of the Hepburn Bill which made it unlawful for any railroad to transport, except for its own use, any commodity other than timber which it had manufactured, mined, or pro-

²³ *Hippolite Egg Co. v. U. S.*, 220 U. S. 45 (1911).

²⁴ *Hoke v. U. S.*, 227 U. S. 308 (1913).

duced, or in which it had any interest. The Court interpreted this as meaning that the railroad was not forbidden to engage in mining, but that before transporting the product, it had to divorce itself from any interest by a *bona fide* sale. Such legislation, however, was "necessary and proper" in order to insure the enforcement of the regulations providing for equality of rates, publications of tariffs, etc. Any other interpretation would have required the Court to consider and decide several very "grave constitutional questions" as to the powers of Congress to regulate the production and ownership of commodities simply because they might become subjects of interstate commerce.²⁵

But conceding the authority of Congress to regulate child labor indirectly, upon what theory is it based? In the words of a reluctant convert, "the lottery case is authority for the doctrine that interstate carriers may be prohibited from carrying, or shippers or manufacturers from sending from state to state and to foreign countries, commodities produced under conditions so objectionable as to be subject to control, as to their manufacture, by the states under an exercise of their police powers, or of a character designed or appropriate for a use which might similarly be forbidden by law."²⁶ Such legislation, however, would be directed against the articles produced under the objectionable conditions, and the manufacturers who employed child labor would not be prohibited from using the advantages of interstate commerce for other articles, not so produced.²⁷

There is an obvious distinction between such legislation and that advocated by the money trust committee, a distinc-

²⁵ U. S. ex rel. Atty. Gen. v. Delaware & H. Co., 213 U. S. 366 (1909).

²⁶ Opinion of Prof. W. W. Willoughby, quoted by J. Y. Brinton, "The Constitutionality of a Federal Child Labor Law," 62 University of Pennsylvania Law Review, 501. See 2 Willoughby on the Constitution, 738.

²⁷ A further argument in behalf of this legislation is that it would harmonize conflicting state laws which unduly operate in favor of certain manufacturers in their use of interstate commerce.

tion which is suggested, but not stressed, by the Solicitor General in the brief filed on behalf of the government in the newspaper publicity case: there must be no "regulation of the private business of citizens in a manner beyond any express or implied power of Congress" on the ground that such regulation "imposes as a penalty for disobedience a denial of an important federal privilege which Congress controls." Any legislation excluding from the mails must apply directly to the *things* mailed, not to the *persons* using the mails. This is a distinction which is evident in the decisions upholding the interstate commerce legislation, and which underlies the argument that Congress may exclude commodities manufactured in whole or in part by children. The law would operate directly on these commodities, not on account of their inherent character (which would probably not be different from that of other commodities manufactured by adult labor), but because of the objectionable conditions of production. And by a parity of reasoning, Congress could exclude from the mails matter relating to gambling transactions which might be forbidden under the police power of the state, although such matter, on its face, would be harmless. But it is an entirely different proposition absolutely to deny the use of the mails because certain persons have refused to comply with conditions, beyond the power of Congress directly to impose, which it thinks may result in regulating objectionable practices, although these may be entirely disassociated from the bulk of the matter which has been excluded.

The briefs of counsel on behalf of the Pujo Committee furnish no argument to change the opinion here expressed that the proposed legislation would be unconstitutional.²⁸ The validity of the bill is asserted on the ground of the

²⁸ Brief of Samuel Untermyer and Louis Marshall, *Regulation of the Stock Exchange*, p. 652 ff. This brief argues the matter at greater length than does the report of the Pujo Committee (p. 119 ff.), made the previous year and is in reply to the brief of counsel on behalf of the New York Stock Exchange (*Regulation of the Stock Exchange*, p. 570 ff.).

cases, already considered,³⁹ upholding the power of Congress to exclude lottery tickets and fraudulent matter. Chief importance, however, seems to be attached to a dictum of a District Court which says:

"If the use of the mails is a privilege which may be granted or withheld by Congress, Congress has the power to determine what shall be carried and what excluded . . . under the power to regulate the mails it has seen proper to declare that they shall not be used for any purposes which are detrimental to the morals of the people or against public policy, and by enacting that the sending of obscene matter through the mails shall not be permissible, it has determined such acts to be against public policy."⁴⁰ In this case the only matter before the court was the construction of the statute; there was no question as to the power of Congress, and the reasoning making public policy the test is clearly *obiter*. Counsel for the Pujo Committee, however, boldly argued as follows:

"It would therefore be within the competency of Congress, to prohibit absolutely the transmission through the mails of a circular or pamphlet or newspaper containing the quotations or information concerning transactions in securities on stock exchanges or otherwise, just as it has prohibited the transmission of circulars containing information with regard to lotteries. Such a prohibition may be absolute or conditional. Thus Congress might accompany a prohibition absolute in form with a proviso that its inhibition should not be applicable to" matter relating to securities "sold or offered for sale on a stock exchange duly incorporated, whose charter shall contain provisions similar to those set forth in the pending bill." Congress, the argu-

³⁹ Chapters II and IV. See also *Burton v. U. S.*, 202 U. S. 344 (1909), where there is a *dictum* that the statute designed to prevent the postoffice from being used in aid of fraud "has its sanction in the power of the United States, by legislation, to designate what may be carried in the mails, and what must be excluded therefrom; such designation and exclusion to be, however, consistent with the rights of the people as reserved by the Constitution."

⁴⁰ *U. S. v. Musgrave*, 160 Fed. Rep. 700 (1908).

ment concludes, would simply be laying down a "rule as to what shall and what shall not be mailable matter, and in making this classification it is giving expression to what it conceives to be sound public policy, to the same extent and in the same way it does when it enacts any other kind of legislation that comes within the constitutional grant of legislative powers."⁸¹

But, it is submitted, Congress would be doing nothing of the sort. In the cases of the lottery tickets and obscene matter, the inhibition was on account of the inherent character of the matter mailed. If the test was one of public policy, as the very broad language of the District Court's opinion would seem to indicate, Congress simply declared it not sound public policy that the mails of the United States should be used in furtherance of transactions that were harmful. To be sure the Postmaster General is authorized to seize and detain all letters addressed to a person against whom a fraud order has issued, but this is justifiable on the ground that it is reasonably necessary in

⁸¹ Regulation of the Stock Exchange, p. 657. The proposal in the Pujo Bill to deny unincorporated stock exchanges the use of the telephone or telegraph for the transmission of their quotations, raises the question whether Congress may exercise such indirect control under the guise of regulating interstate commerce. This question is discussed in the briefs (Regulation of the Stock Exchange, p. 570 ff. and p. 660 ff.), and is outside the purview of the present essay. From the brief review which I have attempted of the interstate commerce cases, however, it does not appear that they lend any support to the proposition contended for by the Pujo Committee. Generally speaking, the same principles are applicable, in relation to the power over interstate commerce as in relation to that over the mails as furnishing a means by which indirect control may be exerted. But it is proper to point out two possible differences: (1) an exclusion from interstate commerce is *prima facie* a "regulation" within the meaning of the grant in the Constitution; an exclusion from the mails, on the contrary, is not made "to establish postoffices," and it would seem, therefore, that the inhibition would have to be justified as "necessary and proper" to this end; (2) postal facilities are established and maintained by Congress for use, upon the same terms, by everyone standing in the same relation to the government, and it is therefore possible to argue that a denial of these facilities would be improper, when an equally arbitrary regulation of interstate commerce might not be. Neither of these differences, it may be added, is so clear as to be controlling; the first seems to me of probable importance, but the second, while it has been suggested, is of doubtful validity.

order to make effective the regulations against using the postoffice to defraud; but Congress has not yet made it a crime for anyone, some of whose mail matter may come within the inhibition, to deposit in, or take from, the mails, letters of a personal and harmless character. It is improper, then, to argue that in passing the Pujo Bill, Congress would act "to the same extent and in the same way" as it has done in the past. The authority of the fraud order decisions is simply that if Congress excludes matter relating to gambling transactions (as it probably has the right to do), correspondence deposited by or addressed to, the person suspected of unlawfully using the mails, may be seized and detained in order to make the gambling regulations effective. But the cases furnish no ground for the belief that Congress may penalize the use of the mails by these persons for the transmission of matter that is harmless. The brief of counsel for the Pujo Committee does not argue this point; nor does it take the natural, but nevertheless untenable, further position and maintain that Congress may make it a crime to deposit this harmless matter in order to detect violations of a law excluding information concerning gambling contracts.

On the contrary, counsel conceive the public policy of the proposed legislation to be the enforcement of the regulations set forth in the pending bill,—regulations that are not concerned with the character of the mail matter, but with persons using the mails. Not even by twisted interpretations can the adjudicated cases be made to support such reasoning. The "newspaper publicity law" which marks the extreme assertion of congressional authority, applies directly to the papers mailed. Only one *dictum*, of a *nisi prius* court,²² lays down the test of public policy, and if, under its enumerated powers, Congress may legislate in fulfillment of this vague purpose, there would be a good deal of difficulty, I fancy, in showing that it would be subserved by the enforcement of the proposed regulations. And con-

²² U. S. v. Musgrave, above.

ceding that Congress may control the postoffice on grounds of public policy, the fact that the ends to be attained are unconnected with the use of the mails, would prevent the legislative fiat from being final, and the enforcement of the Pujo Committee's recommendations would be so onerous and remote, that it would, I venture, not be permitted.³³ Reasoning such as that indulged in by the counsel, moreover, disregards the principle that runs through all the cases: the enforcement of postal regulations must be consistent with the rights reserved to the people. And the Pujo Bill attempts to regulate, not the mails, but stock exchanges.

The first Employers' Liability Case,³⁴ it is submitted, furnishes sufficient basis to uphold the correctness of the view that the proposed legislation is unconstitutional. In these cases it was held that the statute was not confined to a regulation of interstate commerce, but attempted to control *persons*, not only as to their engaging in interstate commerce, but in other respects, simply because some of their activities came under the authority of Congress. Furthermore, the Supreme Court has held that "there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part."³⁵

There are a number of *dicta* of the United States Su-

³³ The point here made, to repeat, is that if Congress can legislate on grounds of public policy, its regulations must be connected with the use of the mails. The proposed legislation does not seem to fulfill this condition, for much, if not the greater part of the matter transmitted, would be harmless. It should be added, however (although the policy of the legislation is not here considered), that, conceding the power of Congress to act for the accomplishment of purposes not connected with the proper use of the mails, there are not unimportant economic objections to the proposed law. (Regulation of the Stock Exchange, p. 527 ff. and p. 585 ff.) These objections, I think, would have to be examined by the courts if Congress should be allowed the power which I have attempted to show it does not possess.

³⁴ 207 U. S. 463 (1907).

³⁵ *Adair v. U. S.*, 208 U. S. 161 (1907); see also *Keller v. U. S.*, 213 U. S. 138 (1908).

preme Court, particularly in regard to objectionable state statutes, which show that attempted indirect regulation is considered improper, at least for the local legislatures. First in time and importance comes Marshall's famous statement, that "should Congress under pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."³⁶

Or, as was said in another case: "The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of the rights secured by fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the Constitution."³⁷ No power ought to be sought, much less adjudged, "in favor of the United States, unless it be clearly within reach of its constitutional charter." The courts are "not at liberty to add one jot of power to the national government beyond what the people have granted by the Constitution."³⁸

The Court has, moreover, adhered to "the great principle that what cannot be done directly because of constitutional restriction, cannot be accomplished indirectly by legislation which accomplishes the same result. . . . Constitutional provisions," adds Justice Brewer, "whether operating by way of grant or limitation, are to be enforced according to their letter and cannot be evaded by any legislation which,

³⁶ *McCulloch v. Maryland*, 4 Wheat. 316 (1819).

³⁷ *Mugler v. Kansas*, 123 U. S. 623 (1887).

³⁸ *Houston v. Moore*, 5 Wheat. 1 (1820).

although not in terms trespassing upon the letter and spirit, yet in substance or effect destroys the grant or limitation."³⁹

It is, moreover, a serious question whether arbitrary exclusions from the mails would not abridge the guarantee of due process of law. This question has never been before the Supreme Court of the United States, but a District Court has maintained that "the postal monopoly, if granted and exercised by a citizen or a corporation would, from the fact of its being a monopoly, make it imperative that all persons who paid the postal rates and conformed to the reasonable regulations of the postal service should have a common right to the use of the mails, and that, because of the fact of the monopoly thus granted. This right would be protected in the courts if the citizen or the corporation controlling the postal service should attempt to deprive him of it."

The court then suggests that if the federal government should become the owner of all transportation lines and establish a monopoly, facilities would have to be extended to all, subject "to such general laws and regulations as to rates and the operation of the lines as might be enacted and established"; that the right to travel and ship freight "would be readily recognized as a property right in the citizen and one of which a particular citizen could not be deprived except by due process of law. We think the right to the use of the mails, though in a degree much less valuable, than the use of the transportation lines, would be equally a property right, and one which could not be taken

³⁹ Fairbank v. U. S., 181 U. S. 283 (1901). In *Union Bridge Co. v. U. S.*, 204 U. S. 364 (1907) this language was used: "If the means employed *have no substantial relation* to public objects which the government may legally accomplish, if they are arbitrary and unreasonable beyond the necessities of the case, the judiciary will disregard mere forms and interfere for the protection of rights injuriously affected by such illegal action. The authority of the courts to interfere in such cases is beyond all doubt." See also *Morgan v. Louisiana*, 118 U. S. 455 (1886); *Postal Tel. Co. v. Adams*, 155 U. S. 688 (1895); *Collins v. New Hampshire*, 171 U. S. 30 (1898), and *Henderson v. The Mayor of New York*, 92 U. S. 259 (1876).

away except by due process of law."⁴⁰ The use of this property right would, of course, be subject to police regulations by Congress, to the extent that they have been upheld by the Supreme Court, or to which this argument concedes that they may go,—always applying, however, directly to the *things* mailed.

One of the methods urged for compelling federal incorporation of trading companies engaged in interstate commerce is the denial of postal facilities to state chartered concerns, and concerning this one of the abler advocates of such an end, says: "If we are correct in believing that due process requires the equal protection of the laws, an arbitrary selection or classification is beyond the power of Congress. A law which divides those who use the mail into two general classes, all state corporations on the one hand, and all which are not incorporated by a state on the other, does not seem based upon any reasonable difference, either in the character of the person or in the kind of mail matter sent, which will make the classification more than arbitrary selection. The constitutionality of this method, therefore, seems open to grave question."⁴¹ The conclusion of this writer, therefore, is that the constitutionality of the Pujo Bill would be open "to grave question" as denying due process of law.

Thus far the proposed extension of federal control by forbidding persons to use the mails, has been objected to as (in the suggested bill at least) abridging the freedom of the press, as not being a *bona fide* regulation of the mails, as attempting to obviate the objection of *ultra vires* by the use of indirect means, and as denying due process of law. There is a final consideration, which, while not legally con-

⁴⁰ *Hoover v. McChesney*, 81 Fed. Rep. 472 (1897). "The right to mail matter was considered in *Teal v. Felton* [12 How. 284 (1851)], but was not established as a right peculiar to citizens." *Lien, Privileges and Immunities of Citizens of the United States*, p. 41 (Columbia University Studies in History, Economics and Public Law, vol. liv, no. 1). But it would not seem that this case considered such a subject.

⁴¹ *Heisler, Federal Incorporation*, p. 86.

trolling, is none the less important. Without holding strictly to a "literary theory"⁴² of the Constitution one can regret the apparently growing tendency to disregard constitutional provisions and to sanction all legislation if, by any twisted interpretation, it can be upheld by the courts, although it may, as in the case of the postoffice proposals considered above, be well outside the fairly considered powers of the law-making body. This tendency shows an impatience of legal restraint, and a disinclination to follow what may be called constitutional morality. The phrase is that of Grote,⁴³ who, describing Athenian Democracy in the time of Kleisthenes, emphasized the necessity for "a perfect confidence in the bosom of every citizen, amidst the bitterness of party contest, that the forms of the constitution will be no less sacred in the eyes of his opponents than in his own." Such constitutional morality he called "a natural sentiment" as it exists in the United States, but these words will no longer be true if Congress may extend its control in the manner proposed, without waiting for a grant of authority in the manner provided for by the Constitution.⁴⁴

And if the courts should permit such extensions of federal control, enormous powers will, by judicial construction, be taken from the states and given over to the national legislature. For, as it is hardly necessary to remark, the denial of postal and interstate commerce facilities would be almost as efficacious as positive legislation; without using the mails and the channels of trade no business could successfully exist. If congressional control may be thus extended, every business and every individual needing to use the mails would become subject to federal regulation on the vague ground of public policy. The reserved powers of the states would then exist only by the sufferance of Congress, and the cardinal theory of the American system—that the federal government is one of enumerated powers—would become a cynical fiction.

⁴² Woodrow Wilson, *Congressional Government*, p. 12.

⁴³ *History of Greece*, vol. ii, p. 86.

⁴⁴ But see Goodnow, *Social Reform and the Constitution*, p. 91 ff.

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SERIES XXXIV

NO. 3

**JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE**

Under the Direction of the

**Departments of History, Political Economy, and
Political Science**

**THE CONTROL OF STRIKES IN
AMERICAN TRADE UNIONS**

BY

GEORGE MILTON JANES, Ph.D.

Instructor in Political and Social Science in the University of Washington

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PREFACE

This monograph had its origin in an investigation carried on by its author while a member of the Economic Seminary of the Johns Hopkins University. The chief documentary source of information has been the collection of trade-union publications in the Johns Hopkins Library. This study of the printed material has, however, been supplemented by personal interviews and correspondence with both national and local trade-union officials and with employers of labor in a number of industrial centers.

The author would record here his appreciation of the helpful criticism of Professor Jacob H. Hollander and Professor George E. Barnett, under whose guidance the study was undertaken and carried on.

G. M. J.

THE CONTROL OF STRIKES IN AMERICAN TRADE UNIONS

INTRODUCTION

Strikes have been a marked feature of American industrial life during the last fifty years, and this period has been characterized by the rise and growth of trade unions in this country. The two facts are closely connected. The purpose of a strike is to enforce the demands of the men who engage in it by a withdrawal from work. To make this device more effective, the trade union endeavors to organize the workmen. By means of organization three results are accomplished. In the first place, the strike is made more comprehensive and therefore is more likely to succeed. Secondly, the strike is more efficiently financed and the strikers, therefore, can stand out longer. Finally, the advantages won by the strike are better retained when a permanent organization of the men is accomplished.

It is a popular fallacy that trade unions foment strikes and that striking is their reason for being. To this the trade unionist says: "Young and weak unions have many strikes; old and strong ones have few. If unions were mere striking machines, the opposite would be true."¹ The importance of moderation is insisted upon by most labor leaders. Collective bargaining is the ultimate goal of nearly all trade unions, and to reach it not only organization but discipline is needed. Strikes are dangerous to the organization and costly. Hard experience has taught trade-union officials that something more than enthusiasm is necessary to win a strike; and, while it may be true occasionally that a union thrives on opposition, a strike is not to be considered an end in itself. If the strike is

¹ Painter and Decorator, April, 1910, p. 262.

lost, the better wages and conditions obtained by previous effort may be lost also. Experienced union officials, therefore, count the cost before entering on a struggle with the employer. The "get-rich-quick strike method," as it is called, is termed a failure.² Paradoxical as it may seem, young and inexperienced unions often disintegrate after a strike is won, because it is easier to rely on promises than to continue the union and pay dues. But the retention of higher wages and better working conditions is usually contingent on the continuance of the union. The trade-union leader must not merely estimate the chances of success, but must also consider whether the ground won can be held. The law of the survival of the fittest has, therefore, brought about a more or less complete control of strikes in many unions, while in all there is unanimity of opinion concerning the value and need of organization and discipline.

The purpose of this study is to describe the control of strikes exercised by the general or national unions. The evolution of strike initiation from local autonomy to control by the general or national union is first described. This is followed by a somewhat detailed account of the place of the national deputy or agent, and the influence of arbitration. The initiation of strikes is then taken up, after which the unauthorized strike or independent action on the part of local unions is discussed in connection with a classified list of unions and union policies. A consideration of strike management follows, together with a description of the methods used and the part taken by the national deputy or agent. The real source of control, the power of the purse, is then described in the matter of strike benefits, their amounts, and the rules under which they are paid. An account of the growth and influence of the strike fund follows, and in conclusion some figures are quoted as to the amounts paid out in strike benefits. The final chapter is devoted to a discussion of the methods used in bringing a strike to an end.

² Shoe Workers' Journal, February, 1911, pp. 25, 26.

CHAPTER I

THE DEVELOPMENT OF CONTROL

The early history of strikes in American trade unions is characterized by what may be termed the anarchy of local autonomy. The course of development has been away from local independence in all matters pertaining to strikes, towards the vesting of authority in the matter in the hands of the national unions and their officers.

Previous to the panic of 1837 general trade unions composed of the local unions in a particular locality were organized in the larger cities on the Atlantic seaboard. Some measure of control over the initiation of strikes was developed by these organizations. The New York General Trades' Union, for instance, provided in 1833 that "no Trade or Art shall strike for higher wages than they at present receive, without the sanction of the Convention."¹ Under this rule a strike of the cabinet makers was sanctioned in 1835.² The Philadelphia General Trades' Union, likewise, provided in 1836 that any society before striking must give a written notice to the president, who should call a special meeting; if a two-thirds vote of the societies present was given in favor, the strike was to be sanctioned and aid granted. No aid was granted, however, unless the society had been represented in the union for the space of six months and had complied with all other constitutional requirements.³ With the panic of 1837 and the depression which followed, the trade unions went to pieces. The period of rising prices after 1843 found the working classes unorganized, and although there were numerous strikes throughout the country they were sporadic and without

¹ J. R. Commons and H. L. Sumner, *Documentary History of American Industrial Society*, vol. v, p. 218.

² *Ibid.*, p. 234.

³ *Ibid.*, p. 347.

concerted action.⁴ "Before the unorganized strikers," says Professor Commons, "could be united in permanent labor organizations, however, prices had resumed their downward course. Strikes were now futile and the workers turned their attention towards labor reforms through legislation and through cooperative purchasing and mutual insurance."⁵ The interesting thing about this early movement is that the necessity for strike control was recognized and an attempt made to secure it through the only available organ,—the local federation of unions.

A characteristic feature of the trade-union movement since 1852 has been the increasing dominance of the national union, that is, the union of local bodies into a national organization. All other forms of grouping have been subordinated to the control of the national union.⁶ The more fully the trade unions have turned from political and cooperative aims the more thoroughly the national union has established its preeminence. For brief periods the supremacy of the national union has been threatened—as, for instance, during the great growth of the Knights of Labor—but it has always reasserted itself.

The control of strikes has been exercised, therefore, primarily by the national union. Each step in the increasing dominance of the national union has been evidenced by a new check on the power of the local unions to initiate strikes or by the assumption of power on the part of the national union to manage strikes. The control of strikes is by no means equal in all the one hundred and thirty national unions. In the newer and weaker unions local autonomy in strike control is almost complete; in

⁴ In 1846, however, the New York handloom carpet weavers in an effort to bolster up their decaying handicraft met in convention and provided for mutual help. All grievances were to be submitted to the workers of each factory for advice, and before using stringent measures "two-thirds of the whole Trade, the number aggrieved included," should approve and advise the same (J. R. Commons, *Documentary History of American Industrial Society*, vol. viii, p. 241).

⁵ *Ibid.*, p. 214.

⁶ The term "national union" is used throughout this study synonymously with "international union." The greater part of the American trade unions have branches in Canada, and accordingly style themselves international unions.

others the national control is absolute. But the development everywhere is in one direction,—the substitution of national for local control. The evolution of national control will be illustrated by a description of several of the older unions. As in biology life forms repeat or recapitulate in a brief time the previous slow stages of development, so now unions by direct imitation of older unions, or by stern necessity, approach in many respects a common type of policy.

The national union of the Printers, the oldest of the national unions, was organized as the National Typographical Union in 1852. For thirty years the local unions in this organization enjoyed almost complete autonomy, and all that the national union did in the matter was to protest against too frequent strikes. In 1876 rules for the government of strikes were passed providing for at least a three-fourths majority vote of the local union, "all the members being constitutionally notified of the meeting," in order to initiate a strike. Members to have the right to vote must have belonged to the local union at least six months.⁷ "Since the local unions in case of strike were not aided by the International," says one authority, "disobedience to these rules carried no penalty."⁸ With the establishment of the strike fund in 1885, a larger degree of control began to be exercised by the national union.⁹ The real executive power of the union is now vested in an executive council composed of the president, the secretary-treasurer, and the second vice-president, and all strikes must receive the sanction of this body.¹⁰

Local autonomy was the rule with the Iron Molders' Union for several years after its organization in 1859. A strike was sanctioned by the convention of 1861, but with the resolution "that this body recommends to local unions to discountenance all strikes in their respective localities

⁷ Proceedings, 1876, p. 65.

⁸ G. E. Barnett, "The Printers: A Study in American Trade Unionism," in *American Economic Association Quarterly*, October, 1909, p. 327.

⁹ *Ibid.*, p. 67.

¹⁰ See below, Chapter V.

until every other remedy has been tried and failed."¹¹ As early, however, as 1863 the initiation of a strike was made subject to the approval of a referendum vote.¹² In 1866 the corresponding representatives were earnestly requested to return all unauthorized strike circulars under penalty of having their names published if they did not do so. Two official strike circulars sent out the same year received yeas 100, nays 5, and yeas 92, nays 9, and strikes were authorized in both cases.¹³ Strikes were generally authorized; out of forty-one applications in 1866 only three failed to pass. President Sylvis declared that the strike rules had worked well, but added that strikes should be discouraged as much as possible.¹⁴ The rule requiring a two-thirds vote of all the local unions to sanction a strike was changed in 1874 to two-thirds of all the votes.¹⁵ The president was also obliged to give all the facts in his possession when issuing a strike circular.¹⁶ Another change was the grant to local unions of the same number of votes on strike circulars as the number of delegates they were entitled to in convention. Local unions failing to return strike votes were to be fined ten dollars and to suffer forfeiture of all rights until the fine was paid.¹⁷

President Saffin in 1873 published a number of executive decisions in regard to the initiation of strikes, such as the following: no member can strike a job, no shop committee can order a strike, and no job or shop can be struck except by a two-thirds vote of the members at a regular meeting, or at a special meeting when due and proper notice has been given to every member to be present.¹⁸ These decisions formed precedents and have been followed by the officers of other national unions. A standing resolution enacted in 1876 that the question of either financial or

¹¹ *International Journal [Iron Molders]*, April, 1874, p. 322.

¹² *Ibid.*, May, 1874, p. 354.

¹³ *Ibid.*, August, 1866, p. 154.

¹⁴ *Ibid.*, August, 1866, p. 310.

¹⁵ *Ibid.*, March, p. 292, April, p. 327, August, p. 3, 1874.

¹⁶ *Ibid.*, August, 1874, p. 3.

¹⁷ *Ibid.*, p. 5.

¹⁸ *Ibid.*, April, 1873, p. 1; *Constitution*, 1876, p. 32.

moral support should be voted on, and if sanction for a strike with moral support was given, no benefits would be paid.¹⁹ Considerable discontent arose in regard to the referendum vote in the matter, and wider control was given the executive board in 1878; but President Saffin refused to recognize such power.²⁰ One critic said that such executive boards were copied from the Friendly Societies of England and were bound to fail in America.²¹ It was not until 1882, after several years of agitation, that absolute control of all strikes and lockouts was put into the hands of the executive board and the president, with the instruction to see that no more strikes should be carried on at any one time than the organization was able to conduct.²²

A similar development has taken place in the Bricklayers and Masons' International Union since its organization in 1865. At first the general president submitted strike proposals to the presidents of the local unions for approval or disapproval.²³ Such strike arrangements were found to be crude and inefficient and not clear.²⁴ The executive committee, made up of the president and the vice-president, sanctioned strikes, saying that in the absence of any definite rule the matter was left entirely to their judgment.²⁵ In 1868 the following rule was enacted to govern local unions in initiating strikes: "Such unions shall transmit to the president of this union a bill of grievance properly filled up and signed by the president and recording secretary, attested by the seal thereof. When a union wishes to make application for authority to strike the yeas and nays shall be taken and it shall require a majority of two-thirds of the members of said union to adopt the motion. The result of the vote shall in all cases be returned to the president of this union, who on receipt of the bill of grievance shall notify the secretary to forward a printed copy thereof

¹⁹ Constitution, 1876, p. 41.

²⁰ Proceedings, 1878, pp. 48-51.

²¹ Iron Molders' Journal, December 10, 1878, p. 62.

²² Proceedings, 1882, p. 76.

²³ Constitution, 1867, art. xii.

²⁴ Proceedings, 1868 p. 23.

²⁵ Ibid., pp. 14-18.

to each corresponding representative who shall return the same within twenty-four hours with decision thereon. If at the expiration of twelve days he shall find a majority of two-thirds in favor of granting authority to strike, he shall notify the union; and action thereon shall be taken by said union within five days from the receipt of said notice. It shall require a two-thirds majority of said union to authorize a strike."²⁶ President Gaul protested in 1870 that too many local unions went out on strike before asking for official sanction. He declared himself against strikes, but urged that in any event the mode of initiating strikes should be less cumbersome and more expeditious.²⁷ A proposal in the following year to put the matter in the hands of the president was rejected.²⁸ President O'Keefe in 1870 refused to sanction a strike which had received the endorsement of the local unions because of information received after issuing the circular. The matter was threshed out at three conventions, and finally the local union received its strike benefits.²⁹

The greatest complaint against the general vote was the delay of local unions in making returns. The committee on general good recommended in 1886 that all local unions hold weekly meetings in order that their secretaries may be able to bring requests for a strike vote promptly before them for action.³⁰ It was even said that some local unions did not answer at all. To meet this condition it was provided in 1887 that a failure to return strike answers should be penalized by a fine of five dollars.³¹ But even this did not bring the desired results, and the following rule was passed the next year: "Any Subordinate Union failing to report their decision for or against a permission to strike within the specified time, the Secretary shall enter such Unions as voting in the affirmative upon the records of the Bricklayers and Masons' International Union." The time of

²⁶ Proceedings, 1868, pp. 79, 80.

²⁷ Proceedings, 1870, pp. 24, 25.

²⁸ Proceedings, 1871, p. 15.

²⁹ Ibid., p. 8; 1873, p. 14.

³⁰ Proceedings, 1886, p. 107.

³¹ Proceedings, 1887, p. 91.

five days originally set was in 1890 extended to ten days. Unions were requested to transmit their answers, yes or no, by telegraph to avoid delay.³³

Aside from recommendations that strike votes should be taken more quickly, it was proposed from time to time to put the entire matter in the hands of the executive board. Power to investigate strikes was given this board in 1894,³³ more authority in 1897,³⁴ and finally in 1903 the whole matter of strikes and full power in regard thereto were thus referred.³⁵ Pure democracy thus made way for representative government.

The Cigar Makers organized a general union in 1864, and their rules governing strikes did not involve any great amount of centralized control until 1879. Until then the executive board was obliged to sanction without exercising any discretion all strikes except those for an increase of wages.³⁶ The depression of 1873 led to many strikes, and a committee reported in that year that the reason so many had been failures was because the requirements of the law had not been carried out. Recommendation was made for the more rigid enforcement of the rules relating to strikes and assessments.³⁷ In 1879 a thorough change in regard to the initiation of strikes was effected, and the rules then adopted remain substantially unchanged. Strikes involving less than twenty-five members are sanctioned at the discretion of the executive board. All involving more than twenty-five members are submitted to a vote of all local unions. If a majority of those voting

³³ Proceedings, 1888, pp. 69, 113. The following is a characteristic strike report: "The vote on Circular No. 5, being the bill of grievance of Union No. 13, of Lowell, Massachusetts, asking for permission to strike, has been received, resulting in favor of said bill as follows: Number of Unions voting Yes, 227; Number of Unions No, 25; Number of Unions not voting within the ten days required by law, and which are counted in the affirmative, 75; excused from voting, 1; total vote in favor, 302; Number of Unions question submitted to, 328."

³⁴ Proceedings, 1894, p. 84.

³⁵ Proceedings, 1897, pp. 70, 72.

³⁶ Proceedings, 1903, pp. 115, 116.

³⁷ Constitution, 1867, art. vii, sec. 10.

³⁸ Proceedings, 1873, p. 45.

approve the application, the desired permission is given. Any strike for an increase of wages, however, is not considered legal unless approved by a two-thirds majority of all votes cast. The penalty for local unions failing to vote within one week commencing on the day the circular is mailed is fixed by the executive board. The local unions may send their vote by telegram at the expense of the national union provided their location is over two hundred miles distant from the office of the national president. The vote of local unions on strikes is in proportion to their membership: one vote, from seven to fifty members; two votes, from fifty to one hundred members or fraction of not less than seventy-five; three votes, from one hundred to two hundred, and an additional vote for every additional one hundred members.³⁸ Provision was made that the national president in submitting an application to strike should state the number of men already on strike in other localities; the condition of the funds per capita; how much the per capita assessment would be in order to make up the requisite amount, and all other information in his possession bearing upon the matter.³⁹

The tendency of local unions to vote in favor of a strike hastily and without thought or merely by mob influence has been obviated to a certain extent. A rule was passed in 1886 that "all votes in local unions upon questions of strikes must be voted by secret ballot and all votes taken contrary to this method shall not be counted."⁴⁰ A unanimous strike vote invites suspicion that the rule is being violated, and word is returned from headquarters that "unanimous strike votes don't go here."⁴¹

The transition from local autonomy to central control in the initiation of strikes might be traced in the case of other unions; but much of this, certainly in the case of the older and stronger unions, would simply repeat the experiences of the Printers, the Iron Molders, the Brick-

³⁸ Cigar Makers' Official Journal, September 15, 1879, p. 3.

³⁹ Constitution, 1881, art. vi, sec. 7.

⁴⁰ Constitution, 1886, art. vi, sec. 25.

⁴¹ Interview with President Perkins of the Cigar Makers.

layers and Masons, and the Cigar Makers. The tendency is toward centralized control, and new unions usually copy the policies and rules of older unions. A referendum vote, similar to that used by the Cigar Makers, is taken by the Box Makers, the Chain Makers, the Piano and Organ Workers, the Stone Cutters, and the Tobacco Workers. The Flint Glass Workers and the Operative Potters require a vote of the trade, while the railroad brotherhoods also take a general vote before acting. Some sixty-five national unions require that sanction for initiating a strike be had from the executive board. As these executive boards are composed of the general officers and elected members, control of strike initiation is in the hands of the general union through its elected representatives.

CHAPTER II

CONTROL BY NATIONAL DEPUTY

The method usually followed in asking for sanction to strike is for the local union to send with its application to the executive board a statement containing full details as to trade conditions, the strength of the local union, and the prospects for a successful strike. Some unions, like the Carpenters and Joiners, have worked out an elaborate schedule of inquiries to be answered by the president and the secretary of the local union. The information thus obtained makes it possible for the national officers to decide whether a strike ought to be authorized. In many unions this detailed information is either supplemented by or obtained entirely through a general representative or agent. Many of the general officers became dissatisfied with the method of obtaining information through correspondence with local officials, and so with the gradual development of centralized authority in the national unions has come the national agent or deputy.

The national agent may be found as far back as 1866, when President Sylvis of the Iron Molders personally supervised the initiation of a strike in Cleveland, Ohio. "I appointed," he says in his report,¹ "Mr. Alexander Faulkner to look after the interests of the Union; he is still acting under my direction." Faulkner also visited several local unions and settled one strike. The convention of 1863 had already empowered him to visit all local unions, he, however, to collect and pay his own expenses. The Bricklayers and Masons in 1867 gave their president power to appoint a deputy for each local union to supervise the working of his union and to report to the president of the

¹ Proceedings of the Eighth Annual Session, in *International Journal* [Iron Molders], January, 1867, p. 306.

national union all violations of the constitution by his union.² This usage is still found in the Steel Plate Transferers' Association, whose president may appoint national deputies to represent the association where members are employed. A strong feeling in favor of local autonomy persisted, however, among the Bricklayers; for in the convention of 1871 a recommendation that the president visit each union between the sessions failed to carry, and when taken up again at the convention of 1872 was laid on the table for ten years.

The chief executive as an authoritative representative of the national union is found in strongest exemplification, perhaps, in the Brotherhood of Locomotive Engineers. P. M. Arthur, on taking the office of grand chief engineer in 1874,³ began to visit the members of the various divisions and also railroad officials, such as President Scott of the Pennsylvania Railroad. Through his personal conferences and efforts an agreement was made with the Grand Trunk Railway in 1875,⁴ which being violated led to a strike and the making of a new agreement in 1877.⁵ The following extract from a letter written by Mr. Arthur in 1876 to the general superintendent of a railroad illustrates the procedure which he followed in cases where a strike was threatened:

The laws and rules of the Brotherhood of Locomotive Engineers, to which the engineers in your employ belong, require them, when a question arises between them and their employers that they cannot settle satisfactorily, to send for the Grand Chief Engineer. It is his duty to come and use all honorable means in his power to prevent any difficulty occurring between them and the company. Your engineers have sent for me; I have come, not in the spirit of coercion as dictator, but rather as mediator, and would like an interview with you and a committee of your engineers. If you will be kind enough to grant the favor, please inform the bearer of time and place.⁶

The rules of the Locomotive Engineers conferring authority on their executive in regard to threatened strikes have been frequently copied by other organizations. This has

² Proceedings, 1867, p. 52.

³ Locomotive Engineers' Monthly Journal, June, 1874, p. 310.

⁴ Ibid., May, 1875, p. 255.

⁵ Ibid., February, 1877, p. 65.

⁶ Ibid., November, 1876, p. 506.

been due to a large extent to the strong personality and the long and successful administration of Mr. Arthur. Says one writer: "Arthur was the man who led us out of the darkness and wilderness of intemperance, taught us to mind our own business, to attend to our duties, and the importance of non-interference with the affairs of other organizations."⁷

In addition to the written application, the Granite Cutters in 1880 provided for a report by a committee made up of representatives from the two nearest branches and one of the members of the branch in which the difficulty existed.⁸ This report was to describe the condition of the local union and to advise as to the expediency of a strike. James Duncan in 1901 advocated the adoption of a constitutional provision requiring a national officer to visit places where grievances required attention,⁹ and the suggestion was finally incorporated in the constitution in 1905.¹⁰

The Cigar Makers provided in 1886 that the president should appoint, subject to confirmation by the executive board, a member of the national union as agent for a strike or lockout which involved more than fifty members and which had been carried on for a period of eight weeks.¹¹ Provided with proper credentials to act as agent or representative of the national union, he was to proceed to the locality of the strike or lockout. The convention in the following year¹² struck out the clause "has been carried on for a period of eight weeks," thus leaving all strikes and lockouts involving more than fifty members open to investigation and settlement by an agent. The rule regarding the agent was changed at the Detroit convention in 1896,¹³ and an agent is now sent whenever a strike or lockout involving more than fifty men is contemplated or may

⁷ Locomotive Engineers' Monthly Journal, October, 1896, p. 886.

⁸ Constitution, 1880, art. xiii.

⁹ Granite Cutters' Journal, June, 1901, p. 5.

¹⁰ Constitution, 1905, sec. 12.

¹¹ Constitution, 1886, art. vi, sec. 20.

¹² Proceedings, 1887, pp. 10-21.

¹³ Proceedings, 1896, pp. 22, 32, 39.

arise. The local union is required to telegraph within twenty-four hours to the president, who shall within twenty-four hours appoint a member of the national union to proceed to the locality. The report of the committee to which this article was referred said: "It should be apparent to all who have taken note of the foregoing circumstances (costs and difficulties) in the labor movement that where arbitration steps in prior to a difficulty great good has resulted."

The Iron Molders in 1882 ordered that the president either in person or by deputy should visit the place of grievance, investigate, and endeavor to adjust the matter.¹⁴ The Carpenters and Joiners in 1890¹⁵ and the Bricklayers and Masons in 1894¹⁶ made the appointment of such a deputy a fundamental policy.

A special variety of the national deputy is found in the "special defense organizers" of the Hotel and Restaurant Employes' International Alliance and Bartenders' International League instituted by the convention of that organization in 1909.¹⁷ These officials are appointed by the executive board for work in localities where the interests of the union are threatened. Such representatives are sent into towns or cities or states where the unions are confronted with antagonistic legislation, strikes, or serious trouble of any character. As the organization has few strikes, the work of these deputies is chiefly in connection with legislative movements or public agitations concerning the liquor question.

Although the deputy is usually appointed by the president or the executive board and is subject to their direction, it not infrequently happens that a deputy is sent to a particular place by direct order of a convention of the national union. An illustration of this is afforded by the action of the 1903 convention of the Carriage Workers.¹⁸

¹⁴ Proceedings, 1882, p. 76.

¹⁵ Proceedings, 1890, p. 33.

¹⁶ Proceedings, 1894, p. 84.

¹⁷ Proceedings, 1909, pp. 33, 145.

¹⁸ Proceedings, 1903, p. 7.

The business agent of Local No. 83 of Baltimore requested that a national representative be sent to Baltimore to straighten out the existing difficulty and, if possible, try to prevent the threatened strike. John Brinkman was authorized to go for two days with expenses paid by the executive board. Naturally such action on the part of the convention occurs almost exclusively in those unions in which the deputy system is either non-existent or is only slightly developed.

The older and stronger national unions require immediate notification of any impending difficulty, after which a deputy is at once sent to the scene. Some unions provide that a national officer or deputy shall be called in only as a last resort, or at least only after the local union has done everything in its power to settle the difficulty. Thus the rules of the Locomotive Engineers provide that the general committee of adjustment shall exhaust all efforts to effect a settlement before sending for the grand chief engineer;¹⁹ the same rule obtains in the Brotherhood of Locomotive Firemen and Enginemen,²⁰ the Order of Railway Conductors,²¹ the Brotherhood of Railroad Trainmen,²² and the Railway Carmen.²³ The Switchmen²⁴ and the Car Workers²⁵ must not call in the president until after every provision of the constitution and by-laws has been complied with. As an outcome of a discussion begun at the convention of 1903, the Stove Mounters passed a resolution at their convention of 1908 providing that no local union should send for a national officer unless the firm absolutely refused to settle with the local union. It was argued that a little energy, tact, and diplomacy on the part of a local union in settling disputes would lessen expenses and give the president time for organization work. "The Treasury," said President Tierney, "had thus been unnecessarily

¹⁹ Constitution, 1910, secs. 16, 17.

²⁰ Constitution, revised, 1910, p. 105.

²¹ Constitution, 1911, sec. 46.

²² Constitution, 1907, General Rules, no. 8.

²³ Constitution, 1909, sec. 91.

²⁴ Constitution, 1909, sec. 261.

²⁵ Constitution, 1910, sec. 157.

depleted, so that drastic strike measures could not be resorted to and the Stove Mounters had to take anything the manufacturers seemed pleased to offer.²⁶

In general, it may be said that the better disciplined unions can insist on the local unions carrying on negotiations up to the breaking point, since they are assured that there will be no strike until authorization is given. Moreover, in the older and more experienced unions the local unions are better able to handle negotiations. On the other hand, in the newer and poorly disciplined unions there is great danger that a strike may occur at any moment. It is advisable, therefore, that the deputy should be on the ground at the earliest possible moment.

The function of the deputy is to go to the locality, investigate "the alleged matter of complaint," make an effort to adjust the matter, if possible, and report to the president and the executive board of the national union his conclusions as to the situation and recommendations as to what course should be pursued.²⁷ If a strike is authorized, the deputy usually remains on the scene of the trouble until recalled by the executive board on the settlement or discontinuance of the strike.²⁸ The agent or deputy is a representative of the national union, and his duties can be laid down only in a general way. As one writer has said: "The man on the ground representing the International Union should use his best judgment; it does not matter whether he agrees with the local strike committee or not. If capable and experienced he is supposed to lead and not to follow. It's his duty to stand by the International Union regardless of consequences; to protect the funds against waste and extravagance, and to maintain its reputation for a 'square deal' with union manufacturers."²⁹ The deputy must be received by the local union, for if he is not permitted to perform his duties, strike benefits may

²⁶ Proceedings, 1903, p. 5.

²⁷ Thirty-ninth Annual Report of the President and Secretary of the Bricklayers' and Masons' International Union, 1904, p. 71.

²⁸ Proceedings of the Bricklayers' and Masons' International Union, 1903, pp. 115, 116.

²⁹ Cigar Makers' Official Journal, September 15, 1908, p. 1.

be withheld by the national union and no further assistance granted.³⁰ A strike entered into by a union after refusing the offices of a national deputy would be illegal and would subject the local union to a fine or a loss of charter.³¹

The deputy, while keeping in close communication with the national officials, is given considerable latitude in the exercise of his own judgment. This is especially true in the conduct and termination of strikes. The initiation of a strike is generally on the advice of the deputy and by authorization of the executive board. In an emergency requiring quick action questions even of strike initiation must at times be decided by the deputy. In only a few unions, however, is the possibility of such an emergency contemplated by the constitution or rules. In the Actors' International Union authority is given to its four national district deputies, who visit the local unions, inspect the books, collect money, and act as organizers, to act on their own responsibility in cases of extreme urgency. Before calling a strike involving the union in a lockout, or placing any house on the unfair list, the deputy must call a meeting of at least seven members of the local union or unions interested. Notice of this emergency action must be given immediately to all members of such local union or unions.³²

In all the unions that have adopted the "deputy system" it is regarded as important that the deputy should be on the ground before a strike is begun. It is required, therefore, that the members involved continue at work pending investigation and until a final decision has been reached. The rule has worked well; for any dispute can be more easily adjusted before an actual breach has occurred. President Martin Fox of the Iron Molders observed that this rule "has strengthened the position of the Union and proven beneficial in all cases."³³ President Menger of the

³⁰ Cigar Makers' International Union, Constitution, 1886, art. vi, sec. 22.

³¹ See chapter on The Independent Strike.

³² Constitution, 1910, secs. 83, 117.

³³ Proceedings, 1895, p. 6.

Operative Potters in an interview with the writer said: "If an international officer can get on the ground before a grievance has assumed large proportions and before either side has committed itself, a settlement can be more readily brought about than if the affair is allowed to go on."

A representative coming in from the outside is frequently able to compose differences which the parties themselves cannot settle. Those who are involved in a quarrel are not the best qualified to appraise its merits. Investigation by a party not previously involved is almost always helpful. The agent or deputy acts as a mediator between the local union and the employer, and is often able to eliminate the local prejudice or personal feeling between the two parties. It is true that the deputy comes as the friend of the union; but he takes into account other considerations than the success of the local union. As a representative of the national union, he must consider whether the local union is justified in its demands, and whether the demands have been made in the proper spirit. All of these considerations make him a mediating element more or less independent of the local union.

In many of the national unions the members turn more and more to the national officers in case of grievance, lockout, or strike. President Garretson of the Railway Conductors reports: "One of the developments of our work is that a much greater amount of time is consumed in the settlement of difficulties than was formerly the case and on account of this development the staff of officers has not been large enough to meet the demands made upon it. Notwithstanding this, the results accomplished speak for themselves."³⁴ The Bricklayers and Masons have experienced also a wide expansion of the special deputy system.³⁵ The president, the vice-presidents, and the secretary have all been kept busy at this work for some years. President Bowen in one of his reports states that on account of the demands on his time for such work he

³⁴ Proceedings, 1909, p. 32.

³⁵ Annual Report, 1906, p. 6.

had been in his office at headquarters less than two months out of thirteen. The officials of the Bricklayers say: "This [the special deputy] system has been crowned with the highest success, it has now become a part of the organic law of the organization, and the words 'special deputy' and 'arbitration' are a tower of strength."

The use of the national deputy has spread and is found today in some form in sixty-five national unions. Wherever the national union really controls strikes, some personal representative of the national union has been found necessary. In those unions which are so weak that they can give no aid to their local unions when on strike there is no control of strikes and hence no need for a national deputy.

CHAPTER III

ARBITRATION AND CONTROL

Human nature in labor organizations is much the same as elsewhere. Trade unions include radical, pugnacious, and emotional elements moved more by sentiment than by reason. Most national unions, therefore, provide that before an application for strike sanction on the part of a local union can be even considered, every effort for a settlement of the grievance must have been put forth. The general rule is that the local union must endeavor to adjust either by conciliation or, if that fails, by an offer to arbitrate, any difficulty that may arise. Two forms of arbitration may be distinguished: the general requirement of arbitration, and agreements specifically requiring the arbitration of any dispute.

Agitation for conciliation and arbitration as substitutes for strikes began quite early. The Benevolent and Protective Spinners' Association of New England at its organization in 1858 declared that one of its objects was "to prevent strikes through the medium of arbitration" by referring all disputes if possible to arbitrators whose decisions should be final.¹ A National Labor Congress composed of delegates from various trade unions was held in Baltimore in 1866, and one of its committees made a report discountenancing strikes except "when all means for an amicable adjustment have been exhausted." The committee recommended the appointment of an arbitration committee by each trades assembly for the adjustment of disputes, in the belief that "the earlier adoption of such a system would have prevented a majority of those ill-advised so-called strikes."² In 1873 an Industrial Congress

¹ Constitution, 1858, pp. 4-8.

² International Journal [Iron Molders], September, 1866, p. 180.

made up of representatives of various trade unions, which met at Cleveland, endorsed the idea of arbitration as a substitute for strikes, which were declared to be usually detrimental to both parties engaged in them, and recommended that all unions should adopt a system of arbitration.³

The Cigar Makers in 1873 passed a rule empowering the national president to order any local union in case of difficulties to select a board of arbitration. President Cannon in commenting on this rule says that he was opposed to any and all strikes unless arbitration had first been attempted.⁴ In 1872 the Iron Molders incorporated in their constitution a rule making it compulsory on the local union in case of differences in regard to prices or wages to ask the employer to refer the matter to arbitration.⁵ The offer of arbitration was to be made in writing and under the seal of the local union, for otherwise the offer would not be recognized by the national union and a strike circular would not be issued. This rule was intended to fix the responsibility for the rejection of peaceful methods.⁶ The Lasters' Protective Association, organized in 1879, laid emphasis upon arbitration and settled many difficulties without resort to strike.⁷ A member of the Granite Cutters' Association proposed in 1882 that, since many strikes were instituted to resist reductions in wages, a board of arbitration should be formed to study the conditions of the market, and that if a reduction was found to be necessary, work should go on at reduced wages until business improved.⁸

A considerable number of national unions at present have in their constitutions rules requiring that an offer to arbitrate shall be made before a strike can be called. The Cement Workers, for instance, provide that no sanction shall be given to any strike or lockout until all possible

³ International Journal [Iron Molders], July, 1873, pp. 36-41.

⁴ Cigar Makers' Official Journal, September 18, 1873, p. 6; Constitution, 1873, p. 58.

⁵ Iron Molders' Journal, September 10, 1876, p. 87.

⁶ Ibid., August, 1874, p. 9.

⁷ G. E. McNeill, in Union Boot and Shoe Worker, March, 1900, p. 8.

⁸ Granite Cutters' Journal, December, 1882, p. 2.

efforts to arbitrate the difficulty have failed.⁹ The Piano and Organ Workers make efforts for arbitration compulsory before any strike can be considered legal.¹⁰

The value of such rules, however, does not appear to be very great. The officers of the national union, wherever they have full control of strikes, can offer to arbitrate if that policy appears to be wise. Before the national union had acquired complete control of strikes an attempt was made to lessen the number of strikes by the adoption of rules requiring an offer of arbitration. Where such control exists an arbitrary rule of this kind is valueless. Consequently, the rule persists chiefly in unions in which the control of the national union is slight.

Of far more importance than the general requirement of the arbitration of disputed questions is the increasing insistence by a number of national unions that all local agreements shall contain provisions for arbitration. The Bricklayers have been foremost in this policy. A disastrous strike of the local unions in New York City in 1884, entered into without compliance with rules and against the advice of the executive board of the Bricklayers and Masons, led after much discouragement, great disorganization, and complete bankruptcy to an agreement in 1885 with the Mason Builders' Association as to recognition of the local unions, wages and hours of labor for one year, and the formation of a joint arbitration committee to meet weekly to settle disputes between employers and employees.¹¹ The results of this arrangement led the convention of 1887 to require that all local unions should have rules to provide boards of arbitration for joint arbitration with the employers.¹² A proposal from the National Association of Builders for an arbitration agreement and committee was, however, rejected in 1891.¹³ The convention of 1897 made it mandatory upon the local unions

⁹ Constitution, 1903, art. xiii.

¹⁰ Constitution, 1911, art. vi, sec. 18.

¹¹ Proceedings, 1885, pp. 15-23; 1886, pp. 16-20.

¹² Proceedings, 1887, p. 145.

¹³ Proceedings, 1891, p. 141.

to provide for the arbitration of disputes by a joint board of arbitration, and to keep at work pending the adjustment of differences.¹⁴

These rules have led to the making of a number of local arbitration agreements and have been found on the whole to work well in practice. The New York agreement of the Bricklayers and Masons, made in 1885 and renewed from time to time, averted strikes down to 1904 when a strike in violation of the agreement by local union No. 67 was settled by a general officer.¹⁵

The Carpenters' and Joiners also provide for arbitration agreements. In an agreement between the Carpenters and Builders' Association and the United Carpenters' Council of Chicago in 1891 there were provisions for continuous work pending settlement by joint committees of arbitration, except that work might be stopped by the joint order in writing of the presidents of the respective associations until the decision of the joint arbitration committee was given.¹⁶ The secretary of the Carpenters declared in 1890 that many strikes had been prevented by these methods.¹⁷ Among other national unions whose local unions are encouraged or required to include arbitration clauses in their agreements are the Bakery and Confectionery Workers, the Barbers, the Brewery Workers, the Granite Cutters, the Hotel and Restaurant Workers, the Horseshoers, the Machinists, the Pavers, the Steam Engineers, the Steam Fitters, the Teamsters, the Tile Layers, and the Tobacco Workers.

In the greater part of the unions which require the insertion of the arbitration clause in local agreements arbitration is purely with reference to the interpretation of the agreement. In certain trades, however, where the union label is used, the whole question of wages is relegated to arbitration. The agreement does not, therefore, cover

¹⁴ Proceedings, 1897, pp. 70-72; Constitution, 1897, art. x, sec. 6.

¹⁵ Thirty-ninth Annual Report of the President and Secretary, 1904, pp. 219-229.

¹⁶ Articles of Agreement, 1891, pp. 1, 2.

¹⁷ Proceedings, 1890, p. 1.

the conditions of employment, but merely provides a mechanism for settling all disputes. The Boot and Shoe Workers and the Glove Workers have this form of agreement, and bind themselves to accept the results of arbitration and to furnish workers in case any of their members refuse to comply.¹⁸

Many local agreements, however, contain no arbitration clauses. The assistant mediator of the State of New York reported in 1908 that of the one hundred and twenty-two copies of trade agreements received during that year by the New York Bureau of Labor, sixty-six had no provision for arbitration in case of any dispute between employers and employees. "We are firmly convinced that if all trade agreements had such a clause many strikes could be avoided. Commissioner Lundigran has decided to send a letter to employers and unions having such agreements calling their attention to the fact and urging them at the expiration of existing agreements on their renewal or the making of new agreements to insert such a clause."¹⁹

There is some reason to believe that there is a growing tendency to insert such clauses in local agreements. The

¹⁸ The following clauses in the local agreement of the Chicago Glove Workers, 1911, illustrate this class of arbitration clauses.

"Fifth:—It is mutually agreed that the Union will not cause or sanction any strike, and that the employer will not lockout his employees while this agreement is in force. All questions of wages or conditions of labor which cannot be mutually agreed upon, or any difference which may arise between the parties, the adjustment of which is not otherwise provided for, shall be submitted to an arbitration board of five, the employer to choose two, the union two, and the four to choose a fifth member. The decision of a majority of this Board of Arbitration shall be final and binding upon the Employer, the Union, and the Employees, and pending settlement by arbitration, the work and conditions are to continue in the same manner as theretofore.

"The Employer and the Union are each to pay the expense of their own arbitrators. Any other expense, first agreed upon, in connection with such arbitration is to be borne jointly by the Union and the Employer, and the Employees, and pending settlement by arbitration, the work and conditions are to continue in the same manner as thereto.

"Sixth:—The Union agrees, if requested by the Employer so to do, to assist the Employer in procuring competent glove workers to fill the places of any employees who refuse to abide by Section Five of the Agreement."

¹⁹ Granite Cutters' Journal, March, 1909, p. 2.

statistics compiled by the New York State Department of Labor appear to show this.²⁰ The principle of arbitration has, moreover, been adopted in several local agreements of great importance. The most notable instance of this kind is the 1910 agreement in the cloak, suit, and skirt industry in New York City. In that year, in settling a strike, a protocol or treaty of peace was made between the Cloak, Suit and Manufacturers' Protective Association and various local unions of the International Ladies' Garment Workers' Union acting with the advice and assistance of the national officers. The main point of the agreement is that no strike or lockout shall take place. In case of failure to settle any dispute a board of arbitration is provided for, consisting of one nominee of the manufacturers, one nominee of the unions, and one representative of the public. In addition to the board of arbitration a board of grievances and a system of deputy clerks representing both the manufacturers and the unions were instituted, and thus by means of conciliation and mediation most of the grievances that have arisen have been settled. Mr. Charles H. Winslow says: "Only one-tenth of 1 per cent of the grand total number of cases that have arisen were referred for final adjudication to the board of arbitration, the supreme court of the trade."²¹

A greater measure of control of strikes is gained when the general union enters into an agreement directly with the employers. The earliest of these so-called national agreements were those entered into by Chief Arthur with various railroads on behalf of the Locomotive Engineers in 1873 and continued until the present day, when they are participated in by all the railroad brotherhoods. These agreements, aside from the details concerning wages and hours which do not concern us, contain clauses providing for right of appeal and arbitration in case of dispute. The general rules of the brotherhoods provide for discipline in case of the violation of any contract by members. The

²⁰ New York State Department of Labor, Annual Report, 1911, vol. i, part iii, pp. 577-641.

²¹ Bulletin, Bureau of Labor Statistics, no. 144, March 19, 1914, p. 9.

Locomotive Engineers, the Locomotive Firemen and Enginemen, the Railway Conductors, the Railroad Trainmen, and the Railroad Telegraphers, after their local and general committees and national representatives have failed to bring about an adjustment of difficulties, usually appeal to the mediators designated in the Erdmann (now the Newlands) Act. In case the mediation proceedings are ineffective, the dispute may go to arbitration. This appeal is usually preceded by a strike vote; but this is not necessary in presenting the dispute, as the mediators are governed by the gravity of an existing situation in deciding whether or not it should be considered.²³ The settlement by arbitration of the controversy between the Locomotive Engineers in 1912 and the Locomotive Firemen in 1913 and the eastern railroads of the United States is an illustration of the working of this act. The Iron Molders entered into agreements with the Stove Founders' National Defense Association in 1891, and the National Founders' Association in 1899, providing for continuance at work pending investigation and consideration of any grievance by a joint board.²⁴ A resolution passed at the 1899 convention and embodied in the constitution as a standing resolution declares that conciliation is an established policy of the union.²⁵ The results of the agreement with the National Founders' Association were, however, unsatisfactory, and led to the abrogation of the agreement.²⁶

During the eighties a national uniform wage scale agreement was effected by the American Flint Glass Workers' Union and later by the Amalgamated Glass Workers, the Glass Bottle Blowers, and the Window Glass Cutters and Flatteners. A plan for the arbitration of disputes by a joint committee was submitted to the Ohio Valley Stone Contractors' Association by the secretary-treasurer of the

²³ C. P. Neill, "Mediation and Arbitration of Railway Labor Disputes," in *Bulletin of the Bureau of Labor*, January, 1912, pp. 6, 14.

²⁴ *Proceedings*, 1890, p. 69; 1895, pp. 13-16; 1899, p. 6.

²⁵ *Proceedings*, 1899, p. 126.

²⁶ *Proceedings*, 1902, pp. 609, 611.

Stone Cutters in 1892 and resulted in a mutual agreement.²⁶ The Operative Potters, after a disastrous strike in 1894, at their convention of the same year first discussed the making of an agreement with the manufacturers, and after several years of discussion an agreement was entered into, to go into effect in 1900. This agreement has been renewed annually and no general strike has ensued.²⁷ The general executive board of the Bricklayers and Masons since December, 1900, has entered into agreements with contractors in various parts of the country providing that all differences that may arise be sent to headquarters for adjustment. Pending the same, no strike can be entered upon by the members. Since 1901 there have been agreements between the International Typographical, the International Printing Pressmen's, the International Stereotypers and Electrotypers' Unions and the American Newspaper Publishers' Association, and since 1905 similar agreement has been made by the same association with the International Photo-Engravers' Union. The Coopers' International Union has had such agreements with the Machine Coopers' Employers' Association since 1905, and the National Association of Machine Printers and Color Mixers of the United States with the Wall Paper Manufacturers' Association since 1909. Practically the entire membership of the United Mine Workers outside of the anthracite field is working under district agreements. In 1898 at a joint interstate convention at Chicago an agreement was made covering the States of Illinois, Indiana, Ohio, and Pennsylvania.²⁸ A similar agreement was made in 1903 in the southwestern field covering Missouri, Kansas, Arkansas, and Indian Territory.²⁹ The Coal Hoisting

²⁶ Monthly Circular [Stone Cutters], February, 1892, Supplement, p. 3; March, p. 1.

²⁷ T. J. Duffy, *History of the Brotherhood of Operative Potters*, pp. 19-36.

²⁸ Proceedings, 1899, pp. 8, 9.

²⁹ Joint Interstate Agreement, 1906, p. 12; Decisions of Joint Boards of Miners and Operators of Iowa, 1906; Proceedings, 1904, pp. 27-28. President John Mitchell said in 1904: "In no instance has a strike taken place in advance of which we have not made overtures for peace and exhausted every conciliatory measure at our command" (Proceedings, 1904, p. 30).

Engineers had agreements with the Illinois Coal Operators' Association from 1901 to 1903 providing for the reference of disputes to officials of both organizations.³⁰ The International Longshoremen's Association have also since 1900 entered into various agreements.³¹ The Granite Cutters entered into an agreement in 1907 with the National Association of the Granite Industry of the United States.³²

In the national and district agreements made between national unions and employers' associations the national union and the employers' association ordinarily covenant that there shall be no cessation of work pending an attempt to adjust the dispute by the conference boards made up of an equal number of representatives from each side. The usual rule is that if the conference board fails to agree, either side may take such action as it sees fit. Very little has been done in the direction of providing for arbitration in the event that the board cannot agree. The national and district agreements obviously throw the control of strikes into the hands of the national union, since the national union makes the agreement and is responsible for its observance. There is a tendency, therefore, where such agreements exist for the national union gradually to extend its discipline over the local unions.

³⁰ Agreements, 1901-1903.

³¹ Agreements, 1911-1912, p. 2.

³² Granite Cutters' Journal, July, 1907, p. 2; September, 1907, p. 2; January, 1908, p. 2.

CHAPTER IV

THE INITIATION OF STRIKES

The general usage in strike initiation is that the local union make some effort at adjustment of grievances with employers before entering on a strike. If the local union fails in the endeavor to settle a difficulty by conciliation or arbitration, a representative of the national union is sent to the place. If the national deputy system does not exist, a full report of the difficulty is sent to the general executive board of the national union with a request for advice or, more usually, for sanction to strike. In unions where local autonomy exists the supervision of the national union is, of course, not very rigid, but in unions where there is centralization of control the local union must follow the directions of the national union.¹

In a number of national unions the local unions must meet the following requirements before they are allowed to strike with the consent or support of the national union: All local unions involved must have been affiliated with the national union a certain length of time; they must have paid all dues or assessments, or they must be paying a certain amount of dues. The period of affiliation required varies from three months to one year, the usual rule being six months. The purpose of the second requirement is apparent, while the third is found in unions such as the Bakers, the Book Binders, the Brewery Workers, and the Hotel and Restaurant Workers, whose members do not pay uniform dues.

The reason for these rules, especially the first, lies in the fact that new local unions, before becoming thoroughly organized, are generally impatient for results and expect

¹ See the following chapter on The Independent Strike.

to achieve in a short time what has cost other older local unions long continued effort. The probability of defeat for a local union involved in a strike soon after organization is strong, and is given by some as the main reason for these rules. "The union had just been formed, and very frequently there are men that think it is a part of their existence to give the boss a squeeze every time there is an opportunity," said a general officer of the Coopers' Union in regard to an inexcusable strike in 1871.² "The policy of the parent bodies in this respect is the result of long and costly experience," says an editorial in the *Car Worker*, ending with the declaration that "conditions, not theories, should govern."³ Secretary O'Dea, in recommending to the convention of 1886 of the Bricklayers and Masons the replacement in the constitution of the time provision left out through some oversight for several years, said: "The object being to guard against the admission of a Union for selfish purposes, and to show their good intention of remaining with us."⁴ The president of the Cement Workers complained in 1907, in regard to some trouble he had been summoned to adjust, that some members wanted to get everything at once, and that new local unions, as soon as they got cards, expected the employer to concede everything. New local unions, he said, are told that they should remember that it has taken years of hard work and untold sacrifices to secure the conditions enjoyed by the older local unions.⁵ An additional reason for the rules is the fact that when zeal carries a new local union into a strike and defeat ensues, reorganization is likely to be more difficult than was the building up of the local union in the first place.

The constitutional rules governing the action of local unions in regard to difficulties provide as far as possible for a calm and rational consideration of the question of a

² *Coopers' Journal*, July, 1871, p. 283.

³ *The Car Worker*, September, 1903, p. 3.

⁴ *Proceedings*, 1886, p. 49.

⁵ *Proceedings*, 1907, p. 7.

strike.⁶ In most unions members must be notified by mail or in person, or other sufficient notice given of any meeting of a local union where a strike vote is to be taken or considered. In some unions, like the Painters, the Operative Plasterers, the Stogie Makers, and the Tile Layers, notice ranging from ten to ninety days must be given an employer before enforcing a demand. The usual requirement is that a special meeting shall be called for the particular consideration of any grievance and the taking of a strike vote.

The requirement of most of the national unions is that in voting upon a strike a secret ballot shall be taken. The Teamsters provide explicitly that "the ballot taken must be by 'yes' or 'no,' written on paper ballots."⁷ Unanimous strike votes usually arouse the suspicion at the general union headquarters that the vote was not taken in accordance with the rules. Members in order to vote must be in good standing and must have been members of the local union for at least a certain period, varying from three to six months in different unions. The Granite Cutters provided in 1880 that the officers of local branches should "consult together and, if necessary, adjourn any meeting of importance when, in their judgment, the members are laboring under too much excitement to vote understandingly."⁸

In most unions a decisive vote is required to strike, and this vote must be more than a mere majority. The general requirement is that a two-thirds majority is necessary, while a large number of unions require a three-fourths

⁶ Rules to govern the initiation of strikes were formulated as early as 1854 by the Journeymen Stone Cutters' Association. A two-thirds majority vote of members present was necessary to sanction a strike for higher wages, while a mere majority only was necessary against a reduction (Constitution and By-Laws, 1854, art. viii). In 1858 the Baltimore branch applied to the executive for permission to strike on the first Monday in June if necessary. The local secretary said: "At the same time we wish to say, if we are granted the power to strike on the aforesaid date, we shall in all probability defer it, if at that time we think our chances of success are doubtful" (Stone Cutters' Circular, April, 1858, p. 2).

⁷ Constitution, 1910, sec. 62.

⁸ Constitution, 1880, art. xiii.

majority. The Coopers require four-fifths, and the Railroad Clerks sixty per cent.

In some unions strike votes are taken in asking for sanction to strike, and if the decision of the general executive board or the referendum vote is favorable the strike can be called at once; but in the larger number of unions the strike vote can be taken only after a favorable reply has been received from the general executive board. The Brewery Workers require that after the consent of the national executive board to a strike has been obtained, the question shall be considered by the local union; a vote must be taken by ballot, and a two-thirds majority is required to make a strike legal.⁹ Other unions such as the Bookbinders, the Plate Printers, and the Theatrical Stage Employees require that a meeting to take action must be called by the president of the local union interested within twenty-four hours after a strike has been authorized by the general executive board.

Many national unions insist that when there is more than one local union in a city or district a joint meeting must be held before any strike can be ordered. The Bricklayers and Masons in 1885 adopted such a rule at their convention, and provided that a two-thirds majority of all those voting should be necessary before any strike could be declared.¹⁰ The Brush Makers and the Metal Polishers do not allow the calling in of a general officer until such a conference has been held. The Amalgamated Woodworkers provide that at such a general meeting the difficulty be considered and arrangements made for the management of the strike, should the necessary three-fourths vote favor such action.¹¹ The usual practice is for local unions situated near together to maintain some form of standing organization, variously denominated district union, district council, conference board, joint executive board, joint standing committee, joint advisory board, district executive board, joint council, local joint executive

⁹ Constitution, 1910, art. x, sec. 12.

¹⁰ Proceedings, 1885, p. 88.

¹¹ Constitution, 1905, art. v, sec. 126.

board, or local council. Some such form of organization, together with reference thereto of grievances and preliminary action in regard to strikes, is required by some fifty general unions.

These standing boards or committees are made up in various ways. The Bookbinders provide that the committee shall consist of not less than two members from each local union, and that its duty shall be to meet at least once a month and report to the executive council of the national union the conditions of trade and to endeavor to adjust any difficulty that may arise.¹² In the Brewery Workers the basis of representation is as follows: Each local union is entitled to a delegate for every one hundred members or fraction thereof, but no local union has a right to send more than five delegates. In localities where no quorum can be constituted on the basis of representation as given above, the different unions are required to form a joint local executive board, consisting of seven delegates, who are to be elected by the different local unions in proportion to their respective membership.¹³ The Piano and Organ Workers and the Steam Engineers provide for equal representation from each local union.

The district councils and district unions limit the power of the local unions and extend the control of the national union over strikes. They have full power usually to adjust all differences between local unions and their employers subject to the approval of the general executive board, which has usually sole power to call a strike. The Bakery and Confectionery Workers, the Bookbinders, the Broom Makers, and a few other unions provide that an appeal can be taken by a local union to the general executive board when permission to strike is denied by the district union. The authority of these district organizations is limited directly by the rule of the national union which requires that all by-laws and trade rules of such organizations must be approved by the national officials,

¹² Constitution, 1910, art. x, sec. 8.

¹³ Constitution, 1910, art. iv, sec. 1.

or at least that such rules must not violate any provision of the national constitution. All these conditions make the authority of the national union paramount.

In some national unions, however, the authority of the district union is more extensive. The joint executive board in the Piano and Organ Workers, for example, can order a strike if more than a thousand members are involved.¹⁴ The district unions of the United Mine Workers of America have power to declare strikes and some of them have paid large amounts of strike benefits; but the tendency is towards control by the national officers, especially when strike benefits are paid by the national organization.¹⁵ The same thing is true to a large extent of the district lodges of the International Association of Machinists and of the International Brotherhood of Boiler Makers. A large degree of control is exercised by the district committees of the Amalgamated Iron, Steel and Tin Workers of America and the International Tin Plate Workers' Protective Association of America. Such committees have power after investigation to legalize a strike, but this degree of local autonomy is more apparent than real because one of the four members of the committee is a national officer, a vice-president of the national union.

The above examples are exceptions to the general rule, and the tendency is toward national control. President John McNeil of the Boiler Makers declared in 1899 that district lodges should not call strikes and that discipline must be maintained,¹⁶ while at the 1908 convention of the same body President Dunn recommended that their authority be strictly limited.¹⁷

In those unions where local autonomy is complete, neither referendum nor action by the general executive board is necessary to sanction a strike; but, as has already been pointed out, the larger number of national unions

¹⁴ Proceedings, 1902, p. 90.

¹⁵ Proceedings, 1911, pp. 468-511.

¹⁶ Journal of the Brotherhood of Boiler Makers and Iron Shipbuilders, October, 1899, p. 310.

¹⁷ Ibid., July, 1908, p. 429.

require executive consent even in cases when strike benefits are not paid by the national organization. The tendency is to make the decisions of the general executive boards binding upon the local unions. The right of appeal is, however, allowed by some national unions, but pending the appeal the local union must abide by the decision of the board. In certain emergencies some national unions permit, however, a local union to go on strike without the consent of the general executive board. A local union of the Blacksmiths has the power in case of emergency to call a strike, if approved by the local executive board of the district council, provided such an emergency strike does not involve more than ten men. But if the difficulty involves more than ten members, no strike can take place without the consent of the general president and the executive board.¹⁸ The Coopers provide that in case of discrimination by an employer against a member or in case of reduction of the scale of wages and hours the local union may declare a strike without sanction from the general office.¹⁹ The general president and the secretary-treasurer of the Bookbinders have the right to sanction a strike when immediate action is considered absolutely necessary, but only in that case.²⁰ The Paving Cutters likewise direct their executive officer, the secretary, to support members in resisting any condition forced by an employer if instant action is necessary.²¹

Certain definite rules limiting the number of strikes are maintained by a number of national unions. One such restraint is the provision forbidding strikes during certain seasons of the year when trade is apt to be dull. The Bricklayers and Masons passed a resolution at their convention of 1871 that no aid should be given by the national union to any local union striking between the 15th of November and the 15th of March.²² The Cigar Makers

¹⁸ Constitution, 1909, art. viii, sec. 1.

¹⁹ Constitution, 1910, sec. 60.

²⁰ Constitution, 1910, art. x, sec. 3.

²¹ Constitution, 1909, art. xvii, sec. 1.

²² Proceedings, 1871, p. 25.

in 1881 provided for the suspension of applications for an increase of wages from November 1, 1881, until April 1, 1882,²³ and at the 1884 convention an annual suspension was made a part of the constitution.²⁴ In 1885 the rule was changed so that the time of suspension varied with geographical location.²⁵ Strikes are now forbidden during the months mentioned, except in the States of Virginia, South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas, where strikes are forbidden from April 1 to October 1 of any year. The Carpenters and Joiners likewise provided in 1890 that no general strike should be sanctioned from November 1 to April 1.²⁶ One of the general officers declared at the 1890 convention that no greater danger confronted the organization than unsanctioned strikes begun too early in the season. "Carpenters cannot and should not strike at the same time in the season as Masons and Bricklayers. Our work comes after theirs, and our demands should not be made until the new work is well under way. Early strikes are attended almost universally by defeat."²⁷ The Sheet Metal Workers passed a rule in 1891 that, except in case of extreme provocation, no strike should be declared between the first day of January and the first day of June of any year.²⁸ Various changes were made from time to time in the dates at which the no-strike period began and ended, and the rule was finally dropped at the revision of the constitution in 1903. The Piano Workers also do not sanction strikes for an increase of wages between the first day of June and the first day of August, and the first day of January and the first day of March of any year. Exceptions are made, however, in the case of strikes against a reduction of wages

²³ "Resolved, That all local unions suspend applications for an increase of wages from the commencement of November 1st, 1881, until April 1st, 1882. This shall not be binding upon unions, who are compelled to strike against those who have the 'truck' system, reduction of wages, and 'lockouts' forced on them by their employers."

²⁴ Constitution, 1884, p. 20.

²⁵ Constitution, 1886, p. 15.

²⁶ Constitution, 1890, p. 17.

²⁷ Proceedings, 1890, p. 20.

²⁸ Constitution, 1891, art. xiii, sec. 17.

or against the introduction of the truck system or the contract system.²⁹

In addition to these specific rules, the policy of most strong unions is against strikes during periods of trade depression. Chief Arthur of the Locomotive Engineers declared in 1894 in regard to the Chicago Railroad strike of that year that the brotherhood had nothing to do with it as an organization and that any man encouraging a strike during hard times was unfit to be at the head of any labor organization. "There is a time to strike if you have a good cause and there is a time not to strike."³⁰ The general council of the Amalgamated Woodworkers reported in 1896 that they had discouraged applications for strike sanction because they believed "that the time, condition of trade, and other factors militated against the probability of success and, knowing how injurious lost strikes are, we adopted a policy that was in every sense conservative."³¹

A more effective device for the control of strikes is found in the limitation of the number which may be carried on at one time. A writer in 1836 remarked that two branches of the Philadelphia General Trade Union did not strike at the same time, and that because "of this policy the general fund is not too heavily taxed, and the other branches having employment can contribute to it."³² At the present time, the rules of the Blacksmiths³³ give the general executive board power to prevent the general president from sanctioning more than one strike at any one time. The Sheet Metal Workers discourage more than one strike at a time, but provide that emergencies may be met by the general president with the sanction of the executive board as the occasion may require.³⁴ The Tile Layers explicitly limit

²⁹ Constitution, 1906, art. vi, sec. 16.

³⁰ Locomotive Engineers' Monthly Journal, September, 1894, p. 847.

³¹ Proceedings, 1896, p. 189.

³² J. R. Commons and E. A. Gilmore, *Documentary History of American Industrial Society*, vol. vi, p. 51.

³³ Constitution, 1909, art. v, sec. 4.

³⁴ Constitution, 1909, art. xii, sec. 3.

the number of strikes at any given time to one.³⁵ The Coopers,³⁶ the Electrical Workers,³⁷ and the Operative Plasterers³⁸ do not support more than two strikes at a time, the last named union providing that "the first two strikes shall be sustained in order as they apply, providing the executive board decides their claim is just."

The gradual growth of the idea of limiting the number of strikes is seen in the history of the Bricklayers and Masons and of the Carpenters. The secretary of the Bricklayers and Masons complained in 1885 that every application to strike, if properly drawn and voted for by the local unions, was sanctioned and that there was no limit to the number of strikes. This produced an "endless amount of confusion, ill-feeling and misunderstanding" as to strike assessments.³⁹ A rule was passed at the 1885 convention to the effect that only one local union could strike at a time.⁴⁰ Local unions desiring to go on strike were required to wait until any previous application for strike sanction had been disposed of. The limitation of one strike at a time was changed to three at the 1887 convention.⁴¹ The Carpenters and Joiners also at their first annual convention in 1881 provided for only one strike at a time.⁴² This rule was soon repealed, but in 1890 provision was made that when any strike or lockout or any number of strikes involved more than 3000 members no other strike should be sustained or financially aided at the same time by the national union.⁴³ The number involved was in 1900 increased to not over 6000. The Stone Cutters in 1894 substituted for the rule forbidding the sanction of more than two strikes at one time a new rule which forbade the sanctioning of new strikes when ten per cent of the membership of the national union were on strike.⁴⁴

³⁵ Constitution, 1899, art. xiii, sec. 4.

³⁶ Constitution, 1910, sec. 69.

³⁷ Proceedings, 1911, p. 60.

³⁸ Constitution, 1910, art. vii, sec. 16.

³⁹ Proceedings, 1885, p. 34.

⁴⁰ *Ibid.*, p. 65.

⁴¹ Proceedings, 1887, p. 139.

⁴² Constitution, 1881, art. xx, sec. 4.

⁴³ Constitution, 1890, sec. 133.

⁴⁴ Proceedings, 1894, p. 6.

Another device intended to limit the number of strikes is the rule which forbids a local union to make a second application for strike sanction for the same grievance until a certain period of time has elapsed after the disapproval of the first. The Cigar Makers⁴⁵ fix the term at three months, dating from the rejection of the first, as do the Plumbers,⁴⁶ while the Piano Workers⁴⁷ make the period two months and the Blacksmiths⁴⁸ one month.

Another method of limiting strikes is to prohibit all strikes for a definite period by a vote of a convention of the national union. President Saffin of the Iron Molders in 1878, for instance, renewed his recommendation of the previous year that strikes cease for one year and the money so used be expended in agitation and in building up the organization.⁴⁹ A resolution was passed at the Carriage and Wagon Workers' convention of 1903 to the effect that no local union should be permitted to strike for a period of one year.⁵⁰ At the 1906 convention of the same organization a resolution forbidding strikes for three years was offered and, although not adopted, is significant because of the reason given for its presentation. The author urged its adoption "in order that during a reign of industrial peace the craft throughout the country might be thoroughly organized and a fund collected and saved to insure success to those who by consent of a convention or the Executive Board may enter into industrial war."⁵¹

⁴⁵ Constitution, 1888, art. vi, sec. 9; 1896, 20th Edition, sec. 87.

⁴⁶ Constitution, 1910, sec. 171.

⁴⁷ Constitution, 1906, art. vi, sec. 9.

⁴⁸ Constitution, 1909, art. vii, sec. 7.

⁴⁹ Proceedings, 1878, p. 7.

⁵⁰ Proceedings, 1903, p. 3.

⁵¹ Proceedings, 1906, p. 6.

CHAPTER V

THE INDEPENDENT STRIKE

The independent or unauthorized strike may be defined as a strike inaugurated by the local union without the consent of the officers of the national union or without compliance with the rules of the national union. The extent of control on the part of the national unions varies to a considerable extent: First, there are a number of national unions whose local unions have complete autonomy; second, several unions permit the independent strike under certain circumstances; third, a large number forbid any strike without official sanction.

In the first group of national unions, that is, those whose local unions have complete autonomy, are the Barbers, the Blast Furnace Workers and Smelters, the Commercial Telegraphers, the Composition Roofers, the Electrical Workers, the Hod Carriers and Building Laborers, the Print Cutters, the Shipwrights and Joiners, the Slate and Tile Roofers, the Steel Plate Transferers, the Wall Paper Machine Printers and Color Mixers, the Window Glass Cutters and Flatteners, and the Wood, Wire and Metal Lathers.

The absence of any control by the national unions in this group may be explained by the fact that as there are no defense funds, the local unions must finance their own strikes. When, however, the national union pays benefits, more control is obtained. The Barbers, for instance, in 1911 financed a strike for the first time, and through national officers on the ground looked after the interest of the national union from the initiation to the close of the strike. Even in the absence of benefits there is a tendency to discourage hasty or ill-advised strikes. The Hod Carriers passed a resolution at their 1911 convention that all

local unions should notify the general office not less than one month before going out on strike, and stipulated that to receive moral support new local unions must be chartered at least six months previous to a strike.¹

In the second group are found some twenty unions belonging to the building trades which allow their members working on a particular building to strike at once when a grievance arises. The reason given is that it is necessary because of the need of prompt action; if delayed, the building will have been completed and the men scattered. A building is usually erected by giving the contract to one contractor, who sublets to many other contractors. A strike on one building involves only a few men, and unless it spreads costs but little. The various local unions are organized usually in a building-trades council, and if a strike is called by one union the rest go out in sympathy. A good deal of authority is given to the business agent or "walking delegate," at whose discretion such a strike may be called. The rise of the large contractor and the making of agreements are, however, influences tending to the abolition of the single-building strike. The Bricklayers and Masons, for instance, prohibit all such sympathetic strikes and provide for agreements and arbitration. The work of this union is ordinarily under the general contractor and not under a subcontractor, and as it usually comes first in point of time additional strength is thus gained in strike control. But even a general local strike may be entered into by local organizations among many building-trades unions provided they pay their own expenses and do not appeal to the general union for strike benefits.

Several other national unions, such as the Bill Posters, the Brewery Workers, the Cap Makers, the Cloth Weavers, the Hotel and Restaurant Workers, the Ladies' Garment Workers, the Stogie Makers, the Teamsters, and the Theatrical Stage Employees, also allow their local unions under certain conditions to strike without the consent

¹ Proceedings, 1911, p. 19.

of the national union. The general rule in these unions is that in an emergency involving only a small number of men or in a case where no financial assistance is expected, the local union may strike independently. Local unions of the Cloth Weavers, for instance, are allowed to strike on their own responsibility for the first four weeks; after that time the national union assumes charge of the strike, provided that after investigation the local union is found to have been justified in striking.² No strike benefits are paid by the Hotel and Restaurant Workers unless the strike has been sanctioned by the general executive board before being ordered, but they do not "deprive any of their local unions of the right to strike whenever they feel their interests can only be served by such a course." The local union so striking does so, however, upon its own resources and at its own risk, and has no financial claim either upon the national union or upon the other local unions. Strikes for higher wages may be entered into by the local unions of the Stogie Makers without the consent of the national executive board if the local union finances the strike.³ The local unions of the Ladies' Garment Workers may strike without the moral and financial support of the general union, but if more than one local union is concerned sanction is necessary. The general officers insist, however, that more authority on their part is needed.⁴

The national unions in the third group forbid their local unions to go on strike without official sanction. Any strike entered upon without such sanction is termed illegal. In this group may be found the Brewery Workers, the Bricklayers and Masons, the Cigar Makers, the Coopers, the Broom Makers, the Brick, Tile, and Terra Cotta Workers, the Compressed Air Workers, the Cutting Die and Cutter Makers, the Elastic Goring Weavers, the Elevator Constructors, the Glove Workers, the Hatters, the Iron, Steel and Tin Workers, the Machinists, the Maintenance of Way Employees, the Meat Cutters, the Metal Polishers,

² Constitution, 1909, p. 7.

³ Constitution, 1909, art. v, sec. 7.

⁴ Constitution, 1911, pp. 39-40; Proceedings, 1910, p. 19.

the Iron Molders, the Paper Makers, the Pulp Workers, the Pavers, the Paving Cutters, the Printers, the Quarry Workers, the Locomotive Engineers, the Locomotive Firemen, the Railroad Trainmen, the Railroad Telegraphers, the Railroad Expressmen, the Retail Clerks, the Saw Smiths, the Seamen, the Slate Workers, the Street and Electric Railway Employes, the Switchmen, the Tin Plate Workers, the United Mine Workers, the United Powder Workers, the Wire Weavers, the Window Glass Workers, the Flint Glass Workers, the Printing Pressmen, the Photo-Engravers, and the Operative Potters.

The abolition in this third group of the independent strike on the part of local unions has been brought about only after many years of effort and experimentation. The evolution which in many respects is common to all may be best illustrated by a brief consideration of the history of several typical organizations. These unions have found it necessary to prevent the independent strike because of its destructive effects not only on the local union but also on the national organization. In addition, the influence of agreements and of the sympathetic strike has been particularly important in bringing the independent strike to an end.

The Iron Molders have always been a militant union. As early as 1866 one of their local unions declared its intention to strike with or without permission of the national union.⁵ President Saffin declared in 1873 that the greatest drawback for many years to their progress as an organization had been the large number of illegal strikes and that the progress of the three preceding years had been due to the rigid enforcement of strike laws.⁶ Again in 1875 he declared that "strikes in violation of law, ending in defeat, always end in the destruction of the union. Blind zeal is not enough."⁷ Illegal strikes, however, continued in spite of these warnings, and the convention of 1882 placed the sanction of strikes in the hands of the

⁵ International Journal [Iron Molders], November, 1866, p. 256.

⁶ Ibid., April, 1873, p. 1.

⁷ Iron Molders' Journal, September, 1875, p. 425.

national president and executive board. To enforce this arrangement the penalty of expulsion, afterwards changed to suspension, was provided.⁸ In 1886 an illegal strike, originating in Cincinnati and embracing during its nine months' duration many thousand molders in the Central West, was a failure on account of trade conditions. It was declared again at the convention of 1886 that the independent strike should not be allowed. Local unions, however, protested that, if they were held down too closely to the rule and had to submit their grievances to the national executive board, they would lose their best opportunity to strike.⁹ Two independent strikes took place in 1901 after sanction had been denied by the executive board,—“the first instance in many years,” declared President Fox, “wherein locals have persisted as a body in an attitude of open defiance of the National Union.” Other local unions were encouraged to attempt the same policy. The matter was taken up at the convention of 1902, and the Chicago conference board was persuaded to declare the independent strike off in that city, and to secure sanction by making application in the usual way.¹⁰ It was also made mandatory upon the president and the executive board to suspend all members participating in unsanctioned strikes and to have their suspension recorded if such insubordination continued.¹¹

A gradual development took place also in the Cigar Makers' Union. As early as 1873 the national union had inaugurated the policy of attempting to arbitrate grievances before calling a strike and of referring proposed strikes to the national organization.¹² In 1876 control of strikes was not very effective, and the official editor wrote: “The disposition to strike on almost every occasion has produced the greatest demoralization to our whole organiza-

⁸ Proceedings, p. 76; Constitution, 1888, art. vii, sec. 2.

⁹ Proceedings, 1886, pp. 9, 17.

¹⁰ Proceedings, 1902, pp. 615, 729.

¹¹ Iron Molders' Journal, September, 1907, p. 652; Constitution, 1907, art. vii, sec. 3.

¹² Cigar Makers' Official Journal, September, 1873, p. 6.

tion."¹³ President Strasser declared in 1880 that "the safety and future of our union demands that all unauthorized strikes be stopped because in the long run they will surely be failures." In 1881 the official editor said the constitution provided that only those strikes officially sanctioned could be supported financially, and urged that the national officers be trusted by the local unions in authorizing strikes.¹⁴ In 1884 the rule was strengthened by providing that "no member or union shall be considered on strike unless said strike shall have been approved by the proper authorities of the International Union."¹⁵ The disastrous results of a strike in Cincinnati in 1884, entered into against the advice of the national officials, made clear the necessity of adopting some means to compel local unions to settle their grievances in accordance with the interests of the national organization. The result of this long and bitter contest, brought on by the refusal to arbitrate, was the passage of a rule at the convention of 1885 at Cincinnati authorizing the executive board to appoint an arbitration board to act with the local committee. The arbitration board was given power to force a conference, and the results of such conference were to be binding, even if not agreeable to the local union involved, if approved by a general vote.¹⁶ In the report of President Strasser at the convention of 1887 he said: "Our unions have gradually recognized the necessity of discipline and the enforcement of our laws governing the management of strikes. Independent strikes have become a matter of the past, not to be revived or tolerated again."

The Carpenters and Joiners since their organization in 1881 have required that their local unions in order to receive assistance shall obtain the authority of the general executive board before striking.¹⁷ In 1894 detailed movements were declared to be better than local ones, while

¹³ Cigar Makers' Official Journal, March, 1876, p. 4.

¹⁴ Ibid., April, 1881, p. 1.

¹⁵ Constitution, 1884, p. 19.

¹⁶ Proceedings, 1885, p. 6; Constitution, 1885, p. 15.

¹⁷ Constitution, 1881, art. xx, sec. 8.

today a local union engaging in a general strike without sanction renders itself liable to expulsion.¹⁸

Among the unions which forbid independent strikes there are marked differences in the efficacy of such rules, and unauthorized strikes occur at times. The tendency, however, is toward a more rigid enforcement of discipline through the infliction of penalties. There are a number of unions in this class—the Boot and Shoe Workers, the Bookbinders, the Brewery Workmen, the Iron, Steel and Tin Workers, the Locomotive Engineers, the Locomotive Firemen, the Railroad Trainmen, the Switchmen, the Railroad Telegraphers, the Railway Carmen, the Railway Clerks, the Street and Electric Railway Employees, the Printers, the Stereotypers, the Photo-Engravers, the Pressmen, the Railway Conductors, the Operative Potters, and the United Mine Workers—in which unauthorized strikes are effectually punished by filling the places of the strikers, by withdrawing the charter of the local union, or by expelling the strikers. The policies of the Printers and of the various railway brotherhoods illustrate this evolution.

When the "defense fund" was established in the Typographical Union, aid was given only in case the strike was sanctioned by the executive council. Many of the larger unions continued, however, to finance their own strikes and did not seek authorization. Professor Barnett has described this: "Although the 'general laws' of the International required that no strike or lockout should be 'deemed legal' unless 'authorized or recognized by the executive council,' and, also that 'to affect union men prejudicially to their standing in the Union the strike must have been authorized in accordance with the International law,' local unions frequently disregarded these provisions and declared strikes without consulting the executive committee. As the interests of the union became more fully nationalized and a national policy developed, the members came to realize that a striking union, even though it paid its own expenses, might seriously imperil the success of an

¹⁸ Proceedings, 1894, p. 26; Constitution, 1911, sec. 139.

International policy. The unhappy outcome of two unsanctioned strikes in the fiscal year 1903-04 led to the enactment by the session of the International in 1904 of a rule which required the council to 'immediately disown' all strikes occurring without its sanction, and 'to guarantee protection to all members who remain at, accept, or return to work in offices affected by an illegal strike.'"¹⁹ In 1904 President Lynch said: "If the law is not strong enough and explicit enough to prevent unauthorized strikes, then change should be made."²⁰

The railroad brotherhoods allow no strikes except those authorized in accordance with the laws of the national union. Members inciting or taking part in an unauthorized strike are on conviction expelled; and if a lodge fails to expel within ten days such striking members, its charter may be revoked by the head of the order, who is directed to transfer to other lodges or system divisions all members not participating in the refusal to expel.

The railway brotherhoods have practically identical methods as to the control of strikes, for the reason that they are employed by the same corporations, have worked together many times in the settling of grievances, have had to a large extent a similar history, and are today bound by common agreements with the railroads which must be enforced by their officers. The strike rules of one order have been taken also as a model by another, as in the case of the Conductors in 1891, who made free use of the rules of the Locomotive Firemen.²¹

The Brotherhood of Locomotive Engineers, the oldest and perhaps the strongest of the railroad brotherhoods, has always opposed unauthorized strikes. A proposed act of federal incorporation brought up at the convention of 1871 provided that any subdivisions organized under the act which "shall by their advice and counsel induce any engineer or engineers, to interfere by a strike with the trans-

¹⁹ Barnett, *The Printers*, p. 323.

²⁰ *Proceedings*, 1904, p. 5.

²¹ *Proceedings of the Order of Railroad Conductors*, 1891, pp. 341, 347.

portation of the mails or other Government property, or who shall refuse to expel any of their members who shall so interfere, shall forfeit their Charter and all the right and interests they may have in any common fund of the Brotherhood that may be accumulated at that time."²² Through the efforts of Grand Chief Engineer Arthur thirteen agreements were made from 1874 to 1877 with various railroads providing for wages, promotion, and arbitration of difficulties. This policy has been continued until the present day.

The Order of Railway Conductors during its early history was a non-striking organization. The necessity of definite laws distinguishing legal from illegal strikes was brought out clearly by a strike in April, 1891, on the Union Pacific Railroad when some of its members went on strike without consulting the grand chief conductor or any head officer of the order and without any meeting or consultation concerning grievances with the railroad officials. In settling the strike Grand Chief Conductor Clark called in to assist him Grand Master F. P. Sargent, of the Brotherhood of Locomotive Firemen, and Grand Master S. E. Wilkinson, of the Brotherhood of Railway Trainmen, and the three agreed that the action of the men was radical, ill-advised, and unreasonable. This strike led Grand Chief Conductor Clark to say: "The time has come when it is absolutely necessary for all organizations in Railroad service to lay down a definite line between a strike legally authorized by an organization, and a wild-cat strike which is inaugurated by irresponsible individuals. Certainly, if the members of these organizations are going to follow the lead of every irresponsible individual who declares himself on a strike, there is no further use for organization."²³ The convention of 1891, to which these words were addressed, enacted strike laws which remain substantially unchanged today. The rule was then adopted that any member engaging in a strike not legally authorized should be expelled on conviction.²⁴

²² Proceedings, 1871, p. 40.

²³ Proceedings, 1891, p. 21.

²⁴ Ibid., p. 347.

In 1888 the Brotherhood of Railroad Brakemen, whose title was changed in 1889 to the Brotherhood of Railroad Trainmen, adopted a rule in convention to the effect that all members should hold themselves in duty bound to keep in good faith any agreement entered into by any railroad and the representatives of the brotherhood. Any violation of such agreements by any member was to be punished by expulsion.²⁶ In 1889 it was made the duty of the grand master to suspend at once the charter of any lodge refusing to carry out the instructions of the general grievance committee, and in 1891 it was provided that any member or members inciting a strike or participating in one, except as provided by the rules of the order, should upon conviction be expelled.²⁶ The convention of 1893 strengthened the rules against strikes as follows: (1) members inciting or participating in an unauthorized strike to be expelled; (2) the lodge in whose jurisdiction an unauthorized strike occurs to expel within ten days all members engaged in such strike; (3) the charter of the lodge failing to expel within ten days members so engaged to be revoked by the grand master, who is then obliged to transfer the non-striking members to other lodges; and (4) no member under charges of taking part in an unauthorized strike to be granted a travelling, transfer, or withdrawal card.²⁷ These rules, phrased in identical language, govern the Locomotive Firemen,²⁸ the Railway Clerks,²⁹ the Maintenance-of-Way Employees,³⁰ and the Railway Carmen.

A determining experience against illegal strikes, as far as the railroad brotherhoods are concerned, was the Pullman strike of 1894 and the calling out of railway employees in a sympathetic strike by the American Railway Union. This latter organization was formed in 1893, and, unlike the older brotherhoods, embraced in its membership men from all branches of the railroad service. Its officers were

²⁶ Constitution, 1888, General Rules, sec. 13, p. 27.

²⁶ Constitution, 1889, sec. 26, p. 26; 1891, General Rules, 10, p. 30.

²⁷ Constitution, 1893, p. 30.

²⁸ Constitution, 1894, p. 68.

²⁹ Protective Laws [n. d.], art. vi, sec. 1.

³⁰ Constitution, 1907, p. 31.

for the most part former brotherhood officials, its president, Eugene V. Debs, having been connected in an official capacity with the Brotherhood of Locomotive Firemen for some sixteen years, and its vice-president, George W. Howard, having been grand chief conductor of the Order of Railway Conductors.

The position taken by the brotherhoods during the strike was that they would expect their members to perform their proper, regular, and customary duties, but that their members must not be forced to perform duties not properly their own. Members were warned that if they left off work voluntarily or were dismissed for refusing to perform their proper and customary duties they could not expect any support from the brotherhoods. A number of members, including some leading officers, were expelled later for violations of their obligations.³¹ Two years later Grand Chief Arthur of the Locomotive Engineers, in commenting on this strike, which caused President Cleveland to send troops to Chicago, said: "Experience has proved that strikes and lockouts which lead to violence and destruction of property afford no satisfactory relief. Workers can not afford to resist the law."³²

Many of the members of the Switchmen's Mutual Aid Association took part in the strike without the sanction of their officials. The officers of the association stood by the rules and the validity of existing agreements. Grand Master Barrett declared that there would be no order issued to participate in the strike while he was grand master.³³ By the members striking "at the drop of the hat" some 2800 men lost their positions, and the result was the disruption of the association. The switchmen reorganized as the Switchmen's Union of North America in October of the same year, 1894, and have since laid much emphasis on rules providing for the expulsion of any member engaging in a sympathetic, illegal strike.³⁴

³¹ Proceedings of the Order of Railway Conductors, 1895, pp. 19-21.

³² Locomotive Engineers' Monthly Journal, June, 1896, p. 511.

³³ Railroad Trainmen's Journal, August, 1894, p. 692.

³⁴ Switchmen's Journal, August, 1902, p. 1199; Proceedings, 1909, p. 38; Constitution, 1909, sec. 264.

The Locomotive Firemen did not join in the strike. As President Debs of the American Railway Union had been the secretary and treasurer of the Firemen, it was expected that his influence would be large. A statement which he had made during the Switchmen's strike at Buffalo in 1892, while secretary and treasurer of the Firemen, was quoted effectively against his later position. In 1892 he had said: "The grand master, nor any other grand officer, nor all of them combined cannot order a strike under any conceivable circumstances, and this is practically true of grand officers of all other organizations of railway employees. In just one way a strike can be legally authorized, and that is by a two-thirds vote of the members on the whole system. The grand master has no more authority to order a strike than you have to declare war against Canada. A sympathy strike is simply out of the question under our present laws, and I think I should know what the laws are, for, with the exception of a paragraph or two of minor importance, I drafted them all. Our laws provide explicitly that only the grievance of a member of our own order can be considered and that, if a strike is inaugurated or participated in under any other circumstances, the members so offending shall be expelled."³⁶ The Firemen met in convention in October, 1894, and besides receiving the resignation of Mr. Debs from the editorship of the Locomotive Firemen's Magazine, the official journal with which he had been connected for some sixteen years, strengthened materially the rules against unauthorized strikes, and defined more clearly the penalties for participation in an unauthorized strike.³⁶ The convention was not satisfied, however, with thus amending the constitution, but it also condemned violations of agreements and unauthorized strikes as "irrational, fanatical and illogical, and injurious to both employer and employee." The brotherhood's position was further defined in two strong resolutions.³⁷

³⁶ Locomotive Engineers' Monthly Journal, August, 1894, p. 740.

³⁶ Constitution, 1894, sec. 221.

³⁷ The text of these resolutions was as follows: "Resolved, That it is the sense of this, the fourth biennial convention in Harrisburg as-

Sympathetic strikes constitute a peculiarly insidious form of the independent strike. The idea back of the sympathetic strike is that "an injury to one is an injury to all." The downfall of the Knights of St. Crispin, the Knights of Labor, and the American Railway Union—all of which were wrecked by sympathetic strikes—points to this conclusion. Moreover, the interests of the various classes of laborers are by no means identical. The railroad engineers and the railroad telegraphers, for example, have little in common; the first are highly trained and receive high wages, and the others have comparatively little training and receive low wages. Machinists and hod carriers present a still stronger contrast. It is not uncommon for the union going out on a sympathetic strike to have had no opportunity to prevent the strike.

Not only the railroad brotherhoods but many of the other national unions have passed rules to guard against local unions being swept off their feet by emotional appeals. The Granite Cutters, for instance, in 1880 provided that no local branch should enter into any arrangements with any other trade which might lead to any expense to the national union without a general vote of the members in good standing.³⁸ The Painters allow no local union expecting help to enter into a sympathetic strike in aid of other than building-trade unions without the consent of the general executive board.³⁹ The prohibition of dual

sembled, to denounce such action on the part of our members, and that in the future we shall insist that they live strictly up to the laws of the order and the contracts under which they are working at all times and in all places, and we emphatically declare that when we enter into an agreement with any railroad company to follow such agreement to the letter in accordance with the laws of the order. And further be it

"Resolved, That we demand on the part of the other labor organizations not to interfere with the members of the Brotherhood of Locomotive Firemen while working under such contracts, and it is the sense of this body that so long as we are not asked to perform work outside of our particular line of duty we will comply with any agreement entered into with any railroad company" (Constitution, 1896, p. 84; Proceedings, 1894, p. 582).

³⁸ Constitution, 1880, art. xxii.

³⁹ Constitution, 1911, sec. 79.

membership and obligation, as by the Locomotive Engineers in 1884, is designed to prevent the members of the brotherhood being involved with other organizations.⁴⁰ The Bookbinders were asked in 1894 to call out the bookbinders of Chicago and to levy an assessment for their support in sympathy with the American Railroad Union. The matter being brought up in the executive council of the Bookbinders, the conclusion was reached that the constitution prevented the council from even considering the proposition.⁴¹

The desirability of a general rule in regard to sympathetic strikes led the Iron Molders at the convention of 1899 to adopt a standing resolution to the effect that the Molders could cooperate with other unions only when the grievance was submitted and the request made before the struggle was begun and after it had been endorsed by the Molders' president and executive board in the usual way.⁴² The Stove Mounters and the Metal Polishers have similar laws. The Amalgamated Woodworkers declare that in all sympathetic strikes local unions must act entirely upon their own responsibility, and their action does not in any way compromise the general council until the strike has been approved.⁴³ The Carriage and Wagon Workers likewise insist on a thorough investigation by the national union, and then allow such strikes only with the consent of that body.⁴⁴ The executive board of the Stone Cutters refused in 1901 to support the Peoria, Ill., branch in a strike in sympathy with the building-trades council, and in explanation the general secretary-treasurer wrote that "the executive board does not recognize any organization but a stone cutter's."⁴⁵ The president of the Boiler Makers in his report to the convention of 1906 cautioned his organization against entering into strikes with other organizations,

⁴⁰ Locomotive Engineers' Monthly Journal, November, 1905, p. 997.

⁴¹ Proceedings, 1895, p. 11.

⁴² Proceedings, 1899, p. 191.

⁴³ Constitution, 1905, sec. 133.

⁴⁴ Proceedings, 1906, p. 13; Constitution, 1911, art. x, sec. 6.

⁴⁵ Stone Cutters' Journal, February, 1901, p. 7.

especially when not consulted or considered before the original strike took place.⁴⁶

The Stove Mounters in St. Louis, Mo., went out in sympathy with the Metal Polishers; in view of the fact that the national union was not notified until after the men struck, the strike was not sanctioned. Delegate Davis in discussing the case at the 1901 convention said: "While no doubt No. 34 made a serious mistake in doing what they did, our constitution at that time was not specific enough to cover the case in hand."⁴⁷ At this convention a rule was passed to the effect that "no local can strike without the consent of the executive board." This rule is still in force.⁴⁸

The Blacksmiths have discussed at three of their conventions the various aspects of the sympathetic strike. The committee on relations with other organizations recommended in 1903 that the organization should not enter into sympathetic strikes conflicting with agreements "unless such conditions exist as will be a detriment to the advancement of all workingmen."⁴⁹ In 1905 one sympathetic strike was reported as sanctioned and another as taking place without sanction. President Slocum in his report in 1905 said: "Sympathetic strikes, however, are to be avoided and shunned as calculated to bring disaster to the organization entering upon one, because it usually proves to be a two-edged sword." President Kline complained in 1907 that every craft with a grievance tried to get the blacksmith shop closed, with the idea that it would have a better chance of winning. Then he added: "True, but if we followed every craft, we would be on strike half the time. Our laws should be well defined relative to strikes."

The usual penalty for entering on an illegal strike is the withholding of strike benefits. An exception to this rule is made by some unions whenever it can be clearly shown that no opportunity was afforded to carry out the consti-

⁴⁶ Proceedings, 1906, p. 204.

⁴⁷ Proceedings, 1901, pp. 4, 21.

⁴⁸ Constitution, 1910, art. ix, sec. 10.

⁴⁹ Proceedings, 1903, p. 58.

tutional provisions and the provocation was so great that immediate action was necessary. In such cases benefits are paid by the Bookbinders, the Plate Printers, the Operative Potters, and the Photo-Engravers, while some unions give no financial aid but lend only their moral support, as in the case of the Metal Polishers. The denial of strike benefits is, however, accompanied at times by permission to appeal directly to other local unions for financial help. The executive board of the Metal Polishers refused benefits in the case of an illegal strike in New Jersey in 1911, but asked all local unions to contribute voluntarily.⁵⁰ But in nearly all unions no such appeal is allowed unless the general officers sanction its issue. The Sheet Metal Workers do not allow any direct appeal.⁵¹ The Tobacco Workers go farther, and do not allow local unions to levy assessments or suspend members not paying the same if the assessments are in aid of an unauthorized strike.⁵²

Some unions provide that members striking illegally shall be fined. The Box Makers, for instance, in 1911, after examining forty-five men fined three of them five dollars apiece for promoting an illegal strike. Other unions, such as the Operative Potters,⁵³ the Railway Carmen,⁵⁴ and other railroad brotherhoods, expel or suspend members so acting. The Boot and Shoe Workers automatically suspend and impose a fine of ten dollars on each person going out on strike in violation of arbitration agreements.⁵⁵

The strongest means for the enforcement of the rules against independent strikes is the revocation or suspension of the charters of the striking local unions and the putting of men to work in place of those on strike. In 1873, for instance, division 115 of the Locomotive Engineers, on account of a violation of the rules of the brotherhood,

⁵⁰ Our Journal [Metal Polishers], February, 1912, p. 7.

⁵¹ Sheet Metal Workers' Journal, May, 1912, p. 162; Constitution, 1909, art. xiii, sec. 6.

⁵² Constitution, 1905, sec. 88.

⁵³ Constitution, 1910, sec. 69.

⁵⁴ Constitution, 1909, sec. 105.

⁵⁵ Proceedings, 1906, p. 95; Shoe Workers' Journal, January, 1911, p. 26.

had its charter suspended for one year, and its members deprived of all benefits and privileges for that time.⁵⁶ The unauthorized strike has rarely appeared in this organization, and it was not until 1905 that discipline for such action became necessary. A strike on the New York Interurban Railroad was participated in by division 105 of the Locomotive Engineers on March 9, 1905, in violation of the contract with the railroad. The strike was entered into without first calling in the grand chief engineer for assistance in adjusting the grievance. Moreover, positive instructions from the officials of the national union were kept from the men. The strike was described as a "hasty, ill-advised action, without either the knowledge or consent of the Grand Chief, illegal in every phase and in which there is a most regrettable evidence of indifference to obligated duty, as well as indifference to the welfare of our organization as a whole by breaking faith with a contract made in conjunction with the Grand Chief Engineer, aided by the influence and good name of the whole order, making a grievous break in our work of honor, upon which rests our contracts with nearly all the railroads of America, Canada, and Mexico." The charter of this division was revoked.⁵⁷

That the rules of the Trainmen are not mere paper ones is proved by the enforcement of discipline against unauthorized strikes in that organization. The Switchmen, members of the Brotherhood of Trainmen, employed at New Haven, Conn., on the New York, New Haven and Hartford Railroad, went on strike in 1906 in violation of their contract with the railroad. After a thorough investigation of the affair Vice-Grand Master Val Smith, representing the brotherhood, pronounced the strike illegal, ordered the men back to work provided the company would reemploy them, and assured the company that the contract between it and the brotherhood would be maintained and

⁵⁶ Locomotive Engineers' Monthly Journal, January, 1875, pp. 33, 35. One member's family lost \$3000 life insurance.

⁵⁷ Ibid., April, 1905, p. 343.

that the brotherhood would furnish capable men to fill all vacancies.⁵⁸ A vigorous editorial in the official organ scored the action of the men in violating their contract and declared that the rule would be enforced.

The general officers of the Amalgamated Association of Street and Electric Railway Employees admonished a local union in 1901 "to confine itself strictly to the laws of our Association and the stipulations set forth in their contract with the company."⁵⁹ A strike on the New York subway in 1905 was declared illegal and "to be neither authorized or approved by the Association," and all loyal members were instructed to report for duty. The convention of the same year concurred in this action, and recommended that in such cases charters should be revoked.⁶⁰

An unauthorized strike over the measurement of type set on the machines of the Chicago Examiner and the Chicago American took place on March 28, 1911. On the previous day Commissioner H. N. Kellogg, of the American Newspaper Publishers' Association, had telegraphed President Lynch of the national union that trouble was liable to occur. Immediately following the receipt of this telegram President Lynch wired President O'Brien of Chicago Local No. 16 as follows: "Kellogg wires me dispute with Hearst papers serious and trouble liable. Of course, under arbitration agreement, disputes must be peaceably adjusted, work continuing in the interim between raising of question and its settlement. Know that you will see agreement is observed." The first knowledge that any official of the International Typographical Union received that a strike had occurred was gained by President Lynch through a bulletin posted on a bulletin board in Washington. President Lynch telegraphed at once to President O'Brien of the Chicago local union: "Just learned of strike on Hearst papers, in violation of arbitration agreement and contract obligations. Men must return to work at once and pro-

⁵⁸ Railroad Trainmen's Journal, September-October, 1906, pp. 835-901.

⁵⁹ Proceedings, 1901, p. 9.

⁶⁰ Proceedings, 1905, pp. 18, 44.

tection guaranteed to those who obey this order." President Lynch also communicated at once with Secretary-Treasurer Hays and the executive council, and the strike, in accordance with the rules of the national union, was disavowed as illegal, and the men were ordered to report for work. The publishers of the Examiner and the American were also informed of this decision. The Chicago local union refused to carry out this order. The national officers then declared that if the men did not return to work the "executive council would order that type for the American and Examiner be set by members in other chapels, and that it would use every effort to see that the papers on which the strike occurred were issued with the least possible delay." The local union proving stubborn, telegrams were sent to the chairmen of the other Chicago papers instructing them to have set up any copy presented for the American and the Examiner unless the strikers returned to work at once.⁶¹ The executive committee of the local union then ordered the men to return to work on the American and the Examiner.

The members of the Photo-Engravers' Union on the Pittsburg Dispatch went out on an illegal strike in 1905, but were ordered to return to work by the national officers, and a deputy was sent who adjusted the dispute.⁶² The International Stereotypers and Electrotypers' Union, likewise, opposes any illegal strike. Stereotypers' Union No. 4 of Chicago instituted a strike on the principal Chicago papers on May 3, 1912, in direct violation of the terms of an agreement entered into with the daily newspapers of Chicago, and underwritten and guaranteed by the national union. The executive officers of the national union as soon as notice had been received of the strike denounced it as illegal, and ordered the men who had struck immediately to return to work. The executive officers went to Chicago and endeavored to have the striking members return to work but without success. On May 9, 1912, the charter of Stere-

⁶¹ Proceedings, 1911, p. 95.

⁶² Proceedings, 1911, p. 352.

otypers' Union No. 4 was suspended. The matter was brought up at the annual convention, and after long debate was referred to the executive board with power to act. The executive board then by unanimous vote chartered a new union to be known as Stereotypers' Union No. 114 of Chicago, Illinois, to take the place of the one suspended.⁶³

The Boot and Shoe Workers in 1907 revoked the charter of their local union in South Framingham, Mass., and entered suit for the funds in the local treasury. The local union had entered upon a strike without holding a meeting or notifying any of the national officers.⁶⁴ Likewise some "treers" in a Brockton factory where the "union stamp agreement" was in force went out on the plea of a right to quit as individuals. The firm notified the officers of the national union, and the latter advertised for men to take the places of the strikers and thus protect the agreement. The strikers appealed to the 1907 convention, but their appeal was not allowed because they had not paid their fines.⁶⁵ Again in 1909 the places of illegal strikers were filled, although with difficulty, and the strikers were termed traitors and repudiators.⁶⁶

The United Mine Workers do not consider any strike legal or entitled to support unless the rules governing strikes have been complied with.⁶⁷ In 1896 the McDonald machine men had a grievance, but instead of observing the strike law they quit work, and then sought an adjustment of the trouble. The Pittsburg convention ordered them back to work, and asked them to present their grievances to the joint committee of ten appointed for the purpose of settling such disputes. The editor of the *Journal* said: "This is discipline, no doubt, but it is of the right kind. It is the discipline that will eventually redound

⁶³ The *Journal* [Stereotypers and Electrotypers], June, pp. 1, 2, September, p. 1, 1912; Proceedings, 1912, p. 36.

⁶⁴ Proceedings, 1907, p. 22.

⁶⁵ *Ibid.*, pp. 21, 319.

⁶⁶ *Shoe Workers' Journal*, January, 1911, p. 26.

⁶⁷ Constitution, 1890, art. v; 1908, art. x.

to the benefit of all of us, if rightly and consistently exercised."⁶⁸

The rare case of a local union going farther in disciplining members than the national organization is willing to go is illustrated in a decision of the general executive board of the Pattern Makers' League. A branch of the league expelled two members on account of their action during an unsanctioned strike. The executive board did not approve the action of the association in expelling these two members, and ruled that they would not approve the action of any branch in expelling members on account of unsanctioned strikes.⁶⁹ This union, however, is highly organized and as a body is opposed to strikes, holding that under their system strikes are unnecessary.⁷⁰

It thus appears that the main forces making for the abolition of the independent or illegal strike have been (1) the growth of a national policy in regard to organization and beneficiary features, (2) the necessity of the enforcement of agreements with employers, and (3) the necessity of discipline to keep the local unions from disruption and destruction through unwise and hasty strikes. The older national unions, such as the Iron Molders, the Bricklayers and Masons, the Cigar Makers, the Typographical Union, and the Locomotive Engineers, have attained a more complete control than the more recently organized unions. Complete control is found in all the railroad brotherhoods.

The grant of strike benefits only in the case of a duly authorized strike acts as a sharp deterrent on local unions contemplating an illegal strike. The suspension or revocation of the charter of a local union means that its members will suffer the loss of death, sickness, and out-of-work benefits offered by the national organization. The expulsion or suspension of the individual members acts also, of course, in the same way, while a fine and the loss of work through the illegal strike may make the financial burden an onerous one.

⁶⁸ United Mine Workers' Journal, January 23, 1896, p. 4.

⁶⁹ Pattern Makers' Journal, April, 1890, p. 16.

⁷⁰ Proceedings, 1906, p. 8.

No uniform date can be assigned to the beginning of the elimination of independent strikes since the date varies with different unions. The Locomotive Engineers, for instance, centralized strike control by agreements through the national executive with the railroads during the years 1874-1879. The Cigar Makers did not gain full control until after 1885, while the Molders, although passing an expulsion rule in 1882, had independent strikes as late as 1901. The Printers did not provide against the illegal or unauthorized strike until 1904. It may be stated generally, however, that fairly effective control of the unauthorized strike began to develop the early eighties.

The lack of control still found in many unions is to be explained by their system of local autonomy and low dues. The national office without money cannot dictate to the local unions when and where not to strike. The influence of increased dues and centralization is shown by the history of the Boot and Shoe Workers since 1899. This organization, by means of increased dues (the bulk of which go to the national union), the raising of a defense fund, the use of agreements, and the giving of sick benefits, has made the national union paramount.

CHAPTER VI

THE MANAGEMENT OF STRIKES

The successful issue of a strike, like the winning of a battle, depends to a large extent on the methods used and the leadership evoked. The evolution of strike management, like that of strike initiation, has proceeded from almost complete autonomy on the part of the local unions to the present large measure of control by the national unions.¹ The usual strike machinery is as follows: (1) the local strike committee, (2) the district committee, and (3) the agent or representative of the national union who conducts the strike and represents the interests of the general union.

(1) The local strike committee chosen by the local union conducts the strike and has full charge of affairs where there is complete local autonomy, as in such unions as the Blast Furnace Workers and Smelters, the Composition Roofers, the Damp and Waterproof Workers, the Print Cutters, the Hod Carriers, the Slate and Tile Roofers, and the Wall Paper Machine Printers and Color Mixers. On the other hand, where control by the national union exists the local committee is chosen under rules laid down by the national union. The Granite Cutters, for instance, in 1880 provided that the local union should elect a strike committee of five members to conduct the strike, report to the national union as to the standing of the dispute, and give an account of receipts and expenditures.² Such an election is a common procedure in several unions, but in

¹ Especially significant, however, as showing the trend of development is the fact that in the Hod Carriers and Building Laborers' Union, which pays no strike benefits, the national president or a special organizer sent by him goes to stay with the local union until the strike ends.

² Constitution, 1880, art. xiii.

others the local executive board, made up of the officers of the local union, acts as a strike committee.³

(2) In places where there is more than one local union of any national union, a district council or joint local executive board usually exists and takes an active part in the management of strikes. The general rule is that a district committee appointed to consider the initiation of a strike continues as a strike committee if, in spite of their efforts at adjustment, a strike ensues. Occasionally a new committee is elected. The Brotherhood of Carpenters and Joiners, for instance, in 1888 provided that when a district council exists it must adopt rules for the government of strikes and lockouts subject to the approval of the general executive board.⁴ Likewise the Cigar Makers' International Union in 1890 voted that in places where more than one local union exists such local unions shall form a "Joint Strike Committee" for the management of all strikes or lockouts, and that in the month of January of each year they must adopt local rules for the management of strikes, these rules to be published in the Cigar Makers' Official Journal.⁵ A concrete illustration of the working of a district council is afforded by a strike in 1911 of thirteen local unions of the Brick, Tile, and Terra Cotta Workers' Alliance under the jurisdiction of District Council No. 1, known as the Chicago district. At the conferences preceding the strike each local union was represented by one delegate and negotiations were carried on by this committee and by the district and general officers. When a strike ensued, however, a general meeting of all the local unions was held, and the management of the strike was turned over to the executive board of the council and the national officers.⁶

It is usual in the case of a general strike for the national president to call upon each local union involved to select a representative to meet with the members of the general

³ Tobacco Workers, Constitution, 1905, sec. 77.

⁴ Constitution, 1888, art. xx, sec. 12.

⁵ Constitution, 1890, art. xxv, secs. 1, 4.

⁶ Brick, Tile and Terra Cotta Workers' Journal, June, 1911, p. 4.

executive board to form a general arbitration committee, with power delegated by the executive board to take full charge of the strike.

(3) An increasing number of unions have adopted in recent years the policy of sending a representative or deputy to the place where any dispute or difficulty arises. The evolution of this practice has been outlined in a previous chapter and need not detain us here. The agent sent in the first place usually remains to manage the strike if all efforts for adjustment fail; or if there has been no opportunity to send a representative before the strike takes place, one is sent as soon as possible thereafter. Some sixty unions pursue this policy, which reflects the general feeling among trade unionists that a local union on strike is not capable of managing its own affairs. The members of the national union outside of the local union on strike are not satisfied unless there is a general officer or agent on the field of conflict to conduct the strike and to give an itemized report of expenditures and full details as to progress.

The recognized strike leader in many unions is the national president, who has authority to command the entire resources of the national union. This is especially true of the railroad brotherhoods such as the Locomotive Engineers, the Locomotive Firemen, the Railway Conductors, the Railroad Trainmen, the Car Workers, the Railway Clerks, and the Railroad Telegraphers. Where more than one strike at a time is being waged the vice-presidents are called upon to take the place of the president. The representative may be, however, any of the officers or members of the national union. In 1904 the Amalgamated Woodworkers' Union had two salaried men who were directing strikes, but whose expenses were charged to "organization and travel."⁷

The duties of the agent or representative in the management of strikes were succinctly stated by the Cigar Makers in the constitution of 1886: "To attend all meetings of

⁷ Proceedings, 1904, p. 22.

the committee having the conducting of the strike or the lock-out in charge, and to report weekly or oftener as circumstances warrant, or if required to do so by the International President, upon all questions in reference to the difficulty, and at the same time forward a copy thereof to each member of the Executive Board. He shall have free access to all meetings of the committee above specified, and have power when directed to examine the books and papers of the local unions."⁸ This phrasing has been adopted by several other unions. The general agent is liable to discipline for neglect of duty. The general executive board of the Bakery and Confectionery Workers in 1911 suspended an agent on account of flagrant neglect of duty in handling a strike.⁹

The tendency is toward an increased use of the general representative, even where a large degree of local autonomy prevails. The Painters plan to send a general officer to the scene of a strike, although their local unions generally finance their own strikes.¹⁰ The Barbers have always allowed their local unions autonomy in the matter of strikes, but in a strike at Louisville, Ky., in 1911, an international representative was sent to the scene of conflict to safeguard the interests of the national union. Even where no representative is sent from outside, the national union in some cases has its officers appoint two or more members of the local strike committee from among the members of the local unions on strike, to act on behalf of the national union.

Headquarters are usually established, where the officers in charge of the strike may be found and where the strikers can gather, and in some cases they are kept open day and night.¹¹ Meetings are held daily in most cases and speakers address these meetings to encourage the men. Members

⁸ Constitution, 1886, art. vi, sec. 21.

⁹ Bakers' Journal, April 29, 1911, p. 1; May 6, 1911, p. 1.

¹⁰ A general officer of this union attended a meeting of a strike committee in Pittsburgh in 1911 and advised how best to conduct the strike (Painter and Decorator, May, 1911, p. 295).

¹¹ The Burlington Strike, p. 205. Compiled by C. H. Salmons, an official account, Aurora, Ill. 1889.

on strike are required to report daily at roll call in some unions, while in others attendance is required twice a day. Failure to report ordinarily entails a forfeiture of strike pay, although some unions excuse non-attendance provided a good reason is given.¹² In some unions members on strike are not allowed to leave the locality without notifying the local union, or without the consent of two thirds of the members involved. Violations are punished or penalized in the International Brotherhood of Blacksmiths by a fine of ten dollars.¹³ Members are also required to do whatever work may be assigned them in connection with the strike, and in case of refusal without a reasonable excuse they forfeit their strike pay or are expelled.

The officers of the local union or the strike committee must report the progress of the strike to the national officers. To begin with, as soon as the strike takes place notice must be sent to general headquarters giving the number of men involved, describing the condition of affairs, and in some cases transmitting a list of the strikers.¹⁴ A blank form is usually sent from headquarters for the local officials to fill out.¹⁵ The Stone Cutters require that

¹² Boiler Makers' Journal, August, 1902, p. 321; Journeymen Barber, August, 1911, p. 225; Constitution, Granite Cutters' Association, 1880, art. xiii.

¹³ Local Constitution, 1909, art. xii, sec. 7.

¹⁴ Bakers' Journal, May 13, 1911, p. 3.

¹⁵ The following is a typical form:

Affiliated with the American Federation of Labor
INTERNATIONAL ASSOCIATION OF MACHINISTS
Office of Grand Lodge—400-407 McGill Building
Report of Strikes and Lockouts

Secretaries will please fill out this blank form and send to International President when a strike or lockout occurs.

.....190
City Date
Lodge No.
Date of strike190 . Time of day
Name of firm
Cause of strike
Total number of machinists on strike
Number of union machinists Number of apprentices

a strike report shall be made to the general office daily,¹⁶ but only a weekly report is required by the greater number of national unions. Failure to report involves the forfeiture of strike pay in most unions. Strike aid was discontinued by the Cigar Makers¹⁷ in 1873 and by the Stone Cutters¹⁸ in 1903 to local unions on strike which had not sent in their strike reports.

One of the first steps taken after the inauguration of a strike is to send out a notice of the strike to the various local unions. Such a notice is a warning to all to keep away from the seat of trouble so that the employers will not be able to get workmen. The Philadelphia Typographical Society in 1803 published an advertisement and sent out notices of such a nature to different societies in the United States, as did the Franklin Typographical Society of New York in 1809. The latter in 1810 urged its members to make every effort to prevent the defeat of their striking brethren in Philadelphia by the importation of printers from New York. After the establishment of the National Typographical Union in 1850 its main purpose for thirty

Number of machinists who have been members for three months.....
 Number of non-union machinists on strike.....Number
 of machinists remaining at work.....Are any of the other
 metal trades involved?.....
 Has a strike ever taken place before; if so, with what result?.....

 What class of work is firm engaged in?.....
 What has been done to avoid the strike?.....

REMARKS

Give full particulars not mentioned above, wages paid, hours worked,
 etc.....

 (SEAL) President.
 Approved: Int'l Pres.
 Rec. Secretary.
 Pay rolls sent:

Date.

NO BENEFITS PAID FOR THE FIRST WEEK OF STRIKE.

¹⁶ Constitution, 1892, art. xi, sec. 7; By-Laws, 1909.

¹⁷ Proceedings, 1873, p. 16.

¹⁸ Stone Cutters' Journal, January, 1903, p. 7.

years was "to build up among the local unions such a community of feeling as to make it as difficult as possible for employers to secure workmen in time of strike."¹⁹ In 1864 the national secretary of the Cigar Makers was instructed to notify all local unions of any difficulty.²⁰ The officers of the Bricklayers and Masons in 1869 issued warnings to members to keep away from the scene of trouble.²¹ The Flint Glass Workers in 1881 instructed their secretary in case of sanctioned strikes to send out a statement of the facts to all local unions, "warning all true men not to accept employment in such factory or factories."²² The same language is used by the Operative Potters²³ and the Tin Plate Workers.²⁴ The Iron Molders directed their president in 1882, and later their secretary, to keep the organization informed as to strikes or lock-outs either by circular or through the Journal.²⁵

Most unions now issue notices of strikes through their secretaries or through their journals. A typical notice is the following by the Machinists, printed in large-face type in their official organ: "Keep away from all points on the Pacific Coast. This means every city, there are no exceptions, and it means you, so don't go out there and pretend that you did not know they were on strike for an eight-hour day."²⁶ That such a notice is not entirely uncalled for is seen by the experience of the Boiler Workers in two strikes in 1892, one in Chicago and the other in Boston. Both local unions had to pay out of their strike benefits the return fare of those members, denounced as "pirates" and "land cormorants," who came on free tickets furnished by the employers and then claimed that they would not have come if they had known a strike was in progress.²⁷

¹⁹ Barnett, pp. 16, 18, 29.

²⁰ Constitution, 1864, art. vii, sec. 2.

²¹ Proceedings, 1869, p. 34.

²² Constitution, 1881, art. ix, sec. 2.

²³ Constitution, 1910, sec. 66.

²⁴ Constitution, 1908, art. vii, sec. 3.

²⁵ Constitution, 1882, art. vi, sec. 2.

²⁶ Machinists' Monthly Journal, January, 1911, p. 15.

²⁷ Proceedings, 1893, p. 41.

Another method of limiting the number of men who must be turned back is to refuse temporarily all travelling or transfer cards. The Cigar Makers in 1886 passed a rule giving local unions on strike power to reject all travelling cards, provided the strike was approved by the national union.²⁸ This rule was amended in 1896 by making an exception in the case of sick members. The Freight Handlers²⁹ and the Stove Mounters³⁰ have a similar rule. The Steam Fitters in 1897 also provided against transfer at such times.³¹ A local union of the Bakery and Confectionery Workers must have the approval of the general executive board before it may refuse to admit members from the national union on travelling cards during a strike or lockout in its district.³² The Bookbinders, when a strike involves more than one third of the membership, allow the local union to reject all travelling cards,³³ while under the same conditions a local union of the Theatrical Stage Employes may reject such cards for three months, or, with the consent of the national president, for six months.³⁴ The Cement Workers, the Horseshoers, the Operative Plasterers, and the Painters also provide against such transfers. Members who have had a bona fide residence of one year or more within the jurisdiction of a local union of the Operative Plasterers prior to a strike or lockout have the privilege of returning. One of the reasons for these restrictions on transfers is that if some employers hold out while others accede to the demands, it becomes difficult to get employment for local members.

The need of conserving all the strength of a national union during a period of difficulty has promoted the feeling that any member leaving the organization at such a time is a traitor to the cause. The Painters, for instance, allow a member to sever his connection with the brotherhood if

²⁸ Constitution, 1886, art. vi, sec. 19.

²⁹ Constitution, 1910, art. xiv, sec. 2.

³⁰ Constitution, 1910, art. ix, sec. 4.

³¹ Proceedings, 1897, p. 7.

³² Constitution, 1911, art. xxii, sec. 6.

³³ Constitution, 1910, art. x, sec. 14.

³⁴ Constitution, 1911, art. vi, sec. 8.

he pays up all dues and other arrearages and does not continue to work as a journeyman, but it does not accept any resignation during a strike or a lockout.³⁵ In the same manner, the return of a charter by any local union before an anticipated strike or during a strike is regarded as reprehensible. The Chain Makers provide that any lodge so acting shall be fined not less than twenty-five dollars. The return of a charter by any lodge is to be investigated, and the decision of the executive council after such investigation stands until the next convention. Members of lodges returning their charters may remain "isolated members" provided they comply with the rules of the national union.³⁶ Some unions issue no charters and initiate no new members during strikes, while others suspend the usual restrictions on the admission of members at such a time.

The feeling against anyone taking the place of a striker is shown by the use of such opprobrious epithets as "scab" and "rat." The epithet "scab" was used by a witness in the trial of the Philadelphia Cordwainers in 1806 in describing a "turn-out" in 1799, and this is probably the first recorded use of the term.³⁷ The oath of the Cordwainers required them to obtain the wage scale and did not allow them to work beside those who did not. A witness at the trial of the Pittsburg Cordwainers in 1815 said: "The means we took to get our wages were a turn-out; Scabbing a shop is leaving it, and those who worked there after that were scabs."³⁸ Another epithet for one working during a strike, used in 1827, was "dung."³⁹ The term "rat" used by the union printers in the same connection appeared first in this country in 1816 and was in all probability brought from England.⁴⁰ The Buffalo Tailors in 1824 penalized their members acting as strike breakers by publishing their names so that they could not get a job

³⁵ Constitution, 1910, sec. 48.

³⁶ Proceedings, 1904, p. 11.

³⁷ Commons and Gilmore, vol. iii, p. 75.

³⁸ Ibid., vol. iv, p. 26.

³⁹ Ibid., p. 139.

⁴⁰ Barnett, p. 23.

with union tailors. For the same offence the Philadelphia Journeymen Tailors in 1827 imposed a fine of five dollars.⁴¹ In 1854 the Journeymen Stone Cutters' Association adopted a rule that any member working during a strike or contrary to rules was to be notified that unless he desisted he would be "scabbed," and that if he still persisted notice would be sent to all other Stone Cutters' associations throughout the United States "requesting them to discountenance him as faithless to his pledge and an enemy to the trade."⁴² The Baltimore Cigar Makers sent in 1856 to the New York and Philadelphia unions the names of a number of journeymen who had refused to obey a strike order, evidently with the idea of keeping those named from working in union shops.⁴³ A member of the Iron Molders was expelled in 1866 for refusing to strike, and a rule was passed in 1876 to expel all members who worked while a strike was on.⁴⁴

The necessity of vigorous action is seen in an experience of the Granite Cutters' Union. This organization in 1883 declared a strike off because union men coming to the place of strike refused to deposit their cards in the local branch and went to work where the strike was on, saying: "When we leave here nobody will know who we are, and we can go to work in any Union Yard."⁴⁵ This was done in spite of the fact that the Granite Cutters' Association had passed a rule in 1880 that "all members or non-members opposing members in a legal dispute shall be considered as enemies of the common cause," to be fined not less than \$10 or more than \$25 except in extreme cases.⁴⁶ Some unions provide for either fine or expulsion, and expel those members who continue to work during a strike or who act as strike breakers. Some of these unions allow an expelled member to be reinstated, but only on the payment of a

⁴¹ Commons and Gilmore, vol. iv, p. 218.

⁴² Constitution, 1854, art. ix.

⁴³ F. T. Stockton, "The Closed Shop in American Trade Unions," in Johns Hopkins University Studies, ser. xxix, no. 3, p. 28.

⁴⁴ International Journal [Iron Molders], November, 1866, p. 249; Constitution, 1876, art. xii, sec. 2.

⁴⁵ Granite Cutters' Journal, May, 1883, p. 4.

⁴⁶ Constitution, 1880, art. xiii.

fine, which in the Brotherhood of Boiler Makers and Iron Shipbuilders includes all fines, as well as dues, assessments, reinstatement stamps and, if the lapse is over twelve months, an additional \$3.⁴⁷ Fines varying from \$5 to \$100 are imposed by the Actors, the Broom Makers, the Carpenters and Joiners, the Iron Molders, the Paper Makers, the Paving Cutters, the Sheet Metal Workers, the Steam Engineers, the Stove Mounters, the Tile Layers, and the Wood Carvers. In the Pattern Makers and the Teamsters suspension is frequently used, carrying with it the forfeiture of all rights, privileges, and benefits from date of commencement of offense. In the Pattern Makers the penalty may be fine, suspension, or expulsion.⁴⁸ Especially indicative of the feeling against strike breakers is a resolution adopted by the Locomotive Engineers in 1904 to the effect that the election by a division as a delegate of any one who, after September, 1904, took the place of another in a strike should be considered an offense, and, upon conviction, such division should have its charter suspended until the meeting of the next convention.⁴⁹

In many unions efforts are made to prevent the employer's having work done in other shops. Members continuing to work in such places are subject to fine or expulsion or both. Mandatory rules directing the national officers to stop such work are found, for example, in the Brushmakers, the Coopers, the Granite Cutters, the Saw Smiths, the Machinists, and the Photo-Engravers. In 1889 the Locomotive Engineers adopted a resolution directing their members in case of a legal strike, if employed on a connecting or adjacent road, to refuse to handle the cars of the railroad against which there was a grievance until the dispute should be amicably settled. The railroads took the matter into the courts, and the rule was declared unlawful by a circuit court in 1895.

⁴⁷ Constitution, 1910, pp. 47, 49.

⁴⁸ Laws, 1910, art. 29, sec. 4.

⁴⁹ Constitution, 1910, sec. 25, p. 12.

This judgment having been affirmed by the United States Supreme Court in 1897, the rule was repealed.⁶⁰

In 1902 the same question came up, and the policy of diverting traffic from roads having trouble by using "all means secretly and quietly and individually," thus avoiding any clash with the law, was adopted: "Any brother being discharged from a road not on a strike, for using his influence to divert traffic from the road on a strike shall be supported by the Brotherhood and be paid \$40.00 per month, as per By-Laws, for a period of six months."⁶¹ The policy of the railroad brotherhoods is to refuse to allow their members to take the place of a striker or to do any of the work of a striker in any strike inaugurated by any recognized labor organization. The Locomotive Engineers are instructed not to do any work which they would not do if there were no strike.⁶² If the machinists are on strike, the engineers have no right to do machinists' work.

Although strenuous efforts are made to keep the employer from getting his work done elsewhere, other employers in the same place who agree to pay the wage scale and abide by the union rules may ordinarily continue to run their shops provided they confine themselves to their own work and do not help the firm whose men are out. In the Bookbinders, the Cigar Makers, and the Plate Printers members must have the consent of the local union to continue at work. The declared policy of the Bakery and Confectionery Workers is to restrict a strike to as few shops as possible so that the members at work may assist financially those who are on strike.⁶³

The importance of a vigorous policy against strike breaking and delinquent members is apparent; but it is also clear that in a bitter and protracted struggle the return of former members weakens by just so much the forces in opposition. It is at this point that the national

⁶⁰ Locomotive Engineers' Monthly Journal, August, 1895, p. 678; August, 1897, p. 819.

⁶¹ Proceedings, 1902, p. 93.

⁶² Ibid., p. 106.

⁶³ Constitution, 1911, art. xviii, sec. 10.

union frequently finds it necessary to override the local union. A local union of the Bricklayers and Masons at the 1910 convention of that union protested against the action of the general executive board in reissuing a travelling card to a delinquent member. The answer of the board was that it had not permitted former misconduct or unpaid fines to interfere with the management of the strike, and it protested strongly against any action that would in any way bind or restrict the board in such a case. "This freedom from constitutional law," it said, "in so far as the removal of fines is concerned, free initiations and the issuing of travelling cards besides other inducements, we consider absolutely necessary." This policy was sustained by the convention.⁵⁴

In the case of non-unionists, special action is taken at times. The American Flint Glass Workers' Union in 1892 gave their national officers, acting with the executive officer of the local union, full authority to deal with such cases.⁵⁵ In 1910, during a general strike in Philadelphia, President Daly of the Metal Polishers' Union, after consultation with several members of the executive board, in order to secure the greatest possible unity of action offered all non-unionists who struck with the Metal Polishers and stayed on strike until the strike was settled free membership cards in lieu of strike pay.⁵⁶ Another method used at times is the proclaiming of a general amnesty for a set period to all "scabs" or "rats."

No stone is left unturned to prevent the employers from obtaining workmen in place of the strikers and thus breaking the force of the strike. At the beginning of the strike of the locomotive engineers and firemen on the Burlington Railroad in 1888, Grand Master Sargent said: "There will be no intimidation, but we shall claim the right to buy any locomotive engineer that we please. We may decide to go to a locomotive engineer and hire him

⁵⁴ Proceedings, 1910, p. 151.

⁵⁵ Proceedings, 1892, pp. 58, 197.

⁵⁶ Proceedings, 1911, p. 84.

ourselves; no one can question us that privilege."⁵⁷ The management of the strike is thus described: "Every strange face that appeared on the scene secured their [the pickets'] attention. If he was inclined to work for the Burlington, his manliness was appealed to, and if that appeal did not succeed he was hired, if possible, and most of them who came first, came under a misconception of the situation and could be easily persuaded to go away and leave the battle to be fought by the interested parties. Many of these were given something for expenses, while others were void of principle and put a selling price on themselves, ranging from \$10.00 to \$50.00. Hundreds were in various ways persuaded to leave. The picture was filled with all phases of humanity, from the appearance of high respectability to the level of the gutter."⁵⁸

The usual plan in many unions during a strike is to set pickets to watch the shops and to endeavor to prevent men from going to work. The instructions issued by the Bakery and Confectionery Workers require that all pickets shall patrol and watch closely all strike-bound shops and persuade any one intending to take a striker's place not to do so, and that they shall report at once to the strike committee or strike meeting any favorable or unfavorable incidents.⁵⁹ The Carpenters and Joiners also recommend that pickets be sent to stand at each railroad station or other place of entry into the city and to guard each job or shop where the men have quit.⁶⁰ This is an old practice. A witness at the trial of the Philadelphia Cordwainers in 1806 said that in a turn-out in 1799 there was a "Tramping Committee" to "watch the 'Jers' that they did not scab it." This committee was changed every day, and members were obliged to serve on it or pay a fine.⁶¹ Picketing is also spoken of in connection with the Journeymen Tailors' strikes in 1827 and 1836.⁶² In 1865 two of the members

⁵⁷ Chicago Tribune, February 26, 1888; Salmons, p. 173.

⁵⁸ Salmons, p. 205.

⁵⁹ Bakers' Journal, May 13, 1911, p. 3.

⁶⁰ Strike Instructions, indorsed by the G. E. B., March 29, 1892.

⁶¹ Commons and Gilmore, vol. iii, p. 75.

⁶² Ibid., vol. iv, pp. 109, 316.

in a local union of the Cigar Makers were sued for enticing workmen away from a struck shop.⁶³

A vigorous boycott is also frequently carried on. In some instances, when the goods of the employer against whom there is a strike are of common consumption, members go from house to house advising against the use of the article; a canvass is made of the stores handling the unfair goods, and meetings of different societies and local unions of other crafts are visited. In some instances advertising matter is furnished the local union by the national union free of charge.⁶⁴ At the same time news of the strike is published, and the name of the firm against which there is a strike is printed in the "Unfair List" or "We Don't Patronize Column" of the trade-union journals.

Another means used in forcing a successful issue to a strike is the extension of the strike to other contracts, shops, or mills of the employer or even to fair employers. The Granite Cutters authorize the national executive council to extend a strike to take in all of the work of an employer.⁶⁵ The national officers of the United Mine Workers may order a suspension of work in any other district or districts than the one affected provided that such action is necessary to conserve the general interests.⁶⁶ In the International Brotherhood of Paper Makers, however, if a strike is not settled within six days, the national officers are directed to shut down the other mills of the company against which there is a strike.⁶⁷ In the Plumbers⁶⁸ and the Lathers⁶⁹ a strike in any particular shop means that the employer has become unfair throughout the entire jurisdiction of the union, and no member can work for him, directly or indirectly, until the strike has been settled. Any local union of the Plumbers permitting its members to

⁶³ Proceedings, 1865, p. 48.

⁶⁴ The Stove Mounters' International Union spent \$517.45 for printed matter during one strike in 1910 (Proceedings, 1910, pp. 21-23).

⁶⁵ Constitution, 1905, sec. 112.

⁶⁶ Proceedings, 1911, p. 119.

⁶⁷ Constitution, 1912, sec. 54.

⁶⁸ Constitution, 1910, sec. 170.

⁶⁹ Constitution, 1911, art. x, sec. 12.

work for such an employer is liable to suspension.⁷⁰ In the Tin Plate Workers a legalized strike in any district requires the members to stop work at the same time in any mill or works in the district belonging to the firm or corporation against which the strike has been called, and the national president is authorized after the strike has continued for seven days to extend the strike to all the works of said corporation or firm.⁷¹

Commissary departments have been inaugurated at times to make the expense of a strike as low as possible. The Cigar Makers during a prolonged strike in New York City in 1877 spent \$48,476.39. The reason given as to why the expenses were not more was that the relief committee supplied the strikers with bread, beef, and the other necessities of life purchased at wholesale prices. A thousand loaves of bread and 2500 pounds of meat were distributed each day.⁷² A convention of the Coopers in 1904, because of the large number of strikes on hand and because of lack of funds, instructed their local executive boards to establish commissary departments for giving relief to strikers actually in need.⁷³

Several national unions have adopted plans to compete with the firms or corporations against which a strike has been called. The general executive board of the Street and Electric Railway Employes purchased in 1905 three automobiles to carry passengers during a strike at Saginaw, Mich. As a result of this experiment a special committee at the convention of the same year recommended that the automobiles already purchased should be kept and an appropriation of \$20,000 made from the defense fund for the purchase of additional ones. One of the speakers affirmed his belief that automobiles would be "a material defense in second class and smaller cities and towns." The report was adopted, and rules were passed later providing for the exclusive control of such automobiles by

⁷⁰ Constitution, 1910, sec. 170; 1911, art. x, sec. 12.

⁷¹ Constitution, 1908, art. viii, sec. 2.

⁷² Proceedings, 1893, p. 59.

⁷³ Proceedings, 1904, p. 507.

the general executive board. Local divisions in order to secure their use must be in good standing, and all profits accruing from their operation were to be placed to the credit of the defense fund.⁷⁴ In 1908 the Photo-Engravers likewise gave their executive council power to purchase one or more "Portable Photo-Engraving" plants to be owned by the national union and to be used as a means of defense in case of strikes or lockouts.⁷⁵

In a protracted strike in Los Angeles the Brewery Workmen, in order that union beer might be on sale, established a beer agency. The experience of the union had shown that unless union beer could be had, "all their principles and all requests will not keep them [working-men] from drinking scab beer." The national executive board was authorized at the 1910 convention to continue this policy and to invest national funds so that the union would be in a position to furnish union beer in localities where strikes or lockouts were on.⁷⁶ The strike committee was obliged to import the beer into Los Angeles by the carload from a long distance, as all breweries connected with the United States Brewers' Association are pledged to remain neutral in case of disputes and under no condition to furnish any beer for the district in which a strike is on. The striking metal polishers of Philadelphia formed in 1911 the Penn Art Metal Company by investing a thousand dollars, and used the profits to pay strike benefits.⁷⁷ Similarly, the national officers of the Bricklayers and Masons during strikes at Alton, Ill., and Aberdeen, S. D., sent agents who secured contracts for the erection of buildings and thus provided work for the members. The general executive board placed funds in local banks at both places to the credit of the union agents.

⁷⁴ Motorman and Conductor, July, 1905, p. 11; Proceedings, 1905, pp. 51-53.

⁷⁵ Proceedings, 1908, pp. 19-23.

⁷⁶ Proceedings, 1910, pp. 167, 165, 170, 171, 178.

Invested in Beer Agency	\$ 7,380.00
Invested in cooperage	10,473.91
Security deposited with breweries	4,480.00
Advanced to Los Angeles Beer Agency	2,000.00

⁷⁷ Proceedings, 1911, p. 173.

CHAPTER VII

STRIKE BENEFITS

The chimneys of Manchester, it has been said, were the real cause of the downfall of Napoleon because they gave England financial independence. Nations must have long purses as well as heavy artillery in order to win battles. The same is true in regard to industrial disputes, for the worker must live while the strike is going on. Nearly all of the older and stronger unions have provided in various forms "the sinews of war" in the shape of strike benefits. The collection and payment of these benefits have gradually been put into the hands of the national officers. This is a large, if not the largest, factor in the increasing control of strikes by the national unions.

The early trade unions paid benefits to some extent, for the Philadelphia Cordwainers in 1806 supplemented by benefits what they received by cobbling and by doing market work.¹ The New York Society of Printers gave relief in 1809, six dollars being awarded two members "who had been thrown out of employment in consequence of refusing to work for less than the established prices."² The Pittsburg Cordwainers in 1815 paid no fixed allowance; but poor members distressed for market money were allowed to take three or four dollars out of the box.³ This early trade-union movement reached its height just before the panic of 1837. The General Trades Union of New York and vicinity during 1834 to 1836 supported strikes of various trades—bakers, hatters, rope-makers, sailmakers, cabinet-makers, stone-cutters, cordwainers, weavers, curriers, leather dressers, tailors—in and about New York, besides furnishing

¹ Commons and Gilmore, vol. iii, p. 33.

² Barnett, p. 267.

³ Commons and Gilmore, vol. iv, p. 34.

aid to strikes in Boston, Philadelphia, and other cities. "The different Trades are combined together in what is called a 'Trade Union,' and each in its turn is supported by the others in striking for higher wages,"⁴ reported *The Journal of Commerce*. The Bookbinders in 1836 were likewise supported by a number of trade unions.⁵

The present trade-union movement began about 1850. At a convention of the journeymen printers of the United States held in New York in that year it was provided that each union was to have the right in time of strike to borrow from sister unions to the amount of one dollar for each member. This convention at its third meeting in 1852 resolved itself into the First Session of the National Typographical Union. By 1860 the members of printers' unions had come to regard it as the duty of the union to give relief in case of strike,⁶ but until the establishment in 1885 of the national strike fund there was no penalty attached to the breaking of national strike rules.⁷

The evolution of strike benefits may be brought out best by a study of their development in the Iron Molders, the Cigar Makers, and the Bricklayers and Masons, three of the oldest unions. The Iron Molders' International Union was organized in 1859; at first it was simply a federation and provided no definite strike benefits, but authorized the president to levy assessments for mutual assistance in time of trouble. A strike in 1859 was financed by an assessment imposed by the local union upon the members still at work and by contributions from other local unions made through the national union. The convention of 1860 provided for revenue by an annual tax of five cents on each member.⁸ The convention of 1861 gave a local union on strike \$350. Numerous small strikes were reported at this convention. A pro rata assessment not

⁴ Commons and Gilmore, vol. v, p. 205.

⁵ *Ibid.*, p. 327.

⁶ Barnett, p. 268.

⁷ *Ibid.*, p. 327. See chapter in this study on The Development of Control.

⁸ *International Journal [Iron Molders]*, February, 1874, p. 258; March, 1874, p. 289; March 31, 1881, p. 4.

to exceed two per cent on the wages earned was levied by the convention of 1863. One strike in that year cost the national union \$12,642.38. Another strike in this same year, growing out of the apprentice question, cost about \$30,000, and continued over a year.⁹ President Sylvis reported to the convention of 1866 that the cost to the organization and the local unions for strikes and lockouts for the six years ending January 1, 1866, was \$1,161,582.26, or on an average per year of \$24 per member. The usual method of raising the benefits was the issuing of a circular by the national president to all the local unions calling upon the members to pay a tax equal to five per cent upon their earnings. It was left with each local union to vote to enforce this provision.¹⁰ In 1866 the recommendation was made that as trouble was anticipated from the action of an employers' convention, every local union should so arrange its finances that it could remit promptly all strike assessments to the central office. The convention of 1867 authorized the national president to lay an assessment; but delay in remittances often led to such payments being made in union script instead of in cash. A large number of strikes in 1869 resulted in a considerable debt, which was only gradually paid off.¹¹ Delay in payment by local unions continued, making strike benefits uncertain. In 1882 a strike reserve fund was established.

The Cigar Makers, organized in 1864, did not provide any means for financing strikes, although the first constitution stated that a local union on strike "shall receive the support of each and every union."¹² The plan of voluntary contributions was adopted by the officers in the absence of all rules upon the subject.¹³ Circulars were sent in each case, and local unions responded with aid. An assessment

⁹ "This strike developed a class of men who would not leave the City, but remained on strike and received strike money when they could have earned more outside of Philadelphia. Timid to try fortunes elsewhere" (*Iron Molders' Journal*, May 31, 1881, p. 4).

¹⁰ *International Journal [Iron Molders]*, October, 1866, p. 250.

¹¹ *Iron Molders' Journal*, April 30, 1879, p. 2.

¹² Constitution, 1864, art. vi, sec. 1.

¹³ Proceedings, 1866, p. 69.

was laid by the convention of 1867 in the form of a tax of twenty-five cents per month per member for strike purposes, the money to remain with the local union subject to the call of the national union.¹⁴ Two protracted strikes in 1869 and 1870 necessitated heavy extra assessments. In place of cash, due bills were issued to members. In 1869 the membership was 5800; in 1873 it had decreased to 3771. In 1879 a permanent strike fund was adopted in place of assessments.

The experience of the Bricklayers and Masons, organized in 1865, has been much the same as that of the Iron Molders and the Cigar Makers, although its first president recommended the establishment of a strike fund.¹⁵ In 1868 a circular was issued and an assessment laid on the local unions by President Frost according to an estimate of what was necessary for the strike.¹⁶ Another tax during the same year of twelve and a half cents per member was ordered sent directly to the local union on strike by the national president.¹⁷ A permanent relief fund for strikes was urged by President Gaul in 1869, the need of such a plan having been seen by President Frost in the previous year. Gaul declared that the failure of the strike in that year was "owing to the delay necessarily arising from our present plan of collecting assessments." Assessments continued to be laid for strike benefits, although in 1875 President Carr said that a strike fund was needed "on account of the tendencies to utter neglect of individual unions in responding to the requisition of the National Union for relief assessments."¹⁸ The convention of 1882 considered the raising of a strike fund, but deemed it impracticable. Strike assessments continued, and although the convention of 1887 passed a rule requiring subordinate

¹⁴ Proceedings, 1867, p. 151.

¹⁵ Proceedings, 1882, p. 17.

¹⁶ Proceedings, 1868, p. 14.

¹⁷ Proceedings, 1868, p. 18. The constitution required during a strike a tax of not less than 10 and not exceeding 50 cents on each member per day, sickness excepted, and all money thus raised was to be sent to the general treasury (Constitution, 1867, art. xii, sec. 4).

¹⁸ Proceedings, 1875, p. 8.

unions to levy a per capita tax of one dollar in advance, it was not until 1891 that a regular strike fund was established.

The Knights of St. Crispin, a national organization of shoemakers, the largest of the many national unions that flourished during the ten years after the Civil War, had a similar experience. Grievance funds were raised by annual contributions of each member to a "contingent fund" held in the treasuries of the local lodges, and by special assessments. Requisition on the "special contingent fund" by numerous strikes led to the downfall of the organization.¹⁹

The experience of these unions demonstrated that it was necessary to have funds on hand with which to pay strike benefits instead of being obliged to wait for the payment of strike assessments. Such funds should be accumulated and held in reserve for times of necessity, thereby distributing the strain of payment over a longer period of time. The power of sustaining members is the key to success in a strike, and this can be secured only when there is an accumulated fund to draw on. Benefits paid after a strike has ended are not of much influence in winning that particular strike.

The Cigar Makers from 1873 to 1879 could not pay the strike benefits provided for by their rules; strikes were lost, members withdrew, and wages were reduced. A reserve fund was inaugurated in 1879 by providing that every local union should collect from every member in standing 15 cents per month and retain this as a strike fund. For every new member admitted 25 cents was to be added to the fund. In 1881 the amount was raised to 20 cents per month and 50 cents for every new member. The funds were to remain in the custody of the local union subject to the order of the national officers, and were not to be used except for strike purposes. When the amount fell below \$1.50 per member, an assessment was to be made.²⁰

¹⁹ D. C. Lescohier, "The Knights of St. Crispin," in *Bulletin of the University of Wisconsin*, no. 365, pp. 32-35.

²⁰ Constitution, 1879, art. xiii, sec. 6; 1881, art. vi, sec. 12. Any local union failing to remit funds within five days when so directed by the executive board was to be suspended.

Later the reserve fund was increased to \$10 per member. An editorial in the official organ concerning this fund said: "We claim that the accumulation of a large fund, to which the adopted laws are but a commencement, will have the influence of decreasing strikes and in lessening failures. The employers of labor generally attack those organizations which are weak and without funds and thereby unable to hold out long enough to injure their business."²¹

For several years prior to the inauguration of a strike fund, writers in the official organ of the Iron Molders urged the accumulation of a defense fund to meet the exigencies of protracted contests. One writer said that organization was necessary, but that a full treasury was even more so, and that without a reserve fund defeat was sure. Another writer declared that all benefits should be paid promptly, and that two or three months should not be allowed to elapse before strikers received their benefits.²² President Fitzpatrick recommended in his report to the convention of 1882 such a fund, and a tax of one dollar per member was laid. Power was also granted to the executive board to levy assessments to replenish the fund in case of emergency.²³ In 1886 the assessment was limited to \$1 per member per quarter; but this limitation was revoked in 1888.²⁴ The finances of the organization were put on a stronger basis in 1890 by the inauguration of a tax of 40 cents a month on every member for the use of the national union and by having fifty-eight per cent of this 40 cents, or 23 cents, go into the strike fund. In 1895 the assessment was changed to 10 cents per week, with fifty-eight per cent to go to the strike fund. In 1902 an additional levy of \$1 per year, payable quarterly by every member for the benefit of the fund, was made.

The Flint Glass Workers established a "resistance fund" as early as 1881 by setting apart twenty cents per member

²¹ Cigar Makers' Official Journal, June 10, 1879.

²² Iron Molders' Journal, July 10, 1880, p. 1; November 30, 1881,

p. 3.

²³ Proceedings, 1882, pp. 12, 77.

²⁴ Proceedings, 1886, p. 51; 1888, p. 102.

per month "for the aid of any member or members, who shall be engaged in redressing a grievance by strike, and to be used for no other purpose." Special assessments could also be made by the national officers.²⁵ Secretary Dillon spoke at the 1887 convention of the advantage of having a substantial fund, and claimed that strikes in unions with such a fund were less numerous, shorter in duration, and of less severity than those in unions without strike funds.²⁶ The present rule was established in 1888, and requires that a certain percentage of the earnings of all members, to be collected at each factory or shop by two clerks, shall be paid over to the financial secretary and sent by him to headquarters. From two to ten per cent of earnings have been thus assessed for the resistance fund, the rate varying according to prospective necessity.

The Operative Potters, like the Flint Glass Workers, raise the money for their strike fund by an assessment on the earnings of their members. The amount of the assessment was fixed at the time of the establishment of the fund in 1894 at one per cent of all earnings.²⁷ There is a collector in each pottery, to whom the members must show their pay envelopes and who collects the assessment and turns it over to the local secretary. The latter at the end of each month sends it on to headquarters. Members failing to pay for three consecutive pay days, or six weeks, are subject to suspension.²⁸

In 1885 the Printers, as the outcome of many years of discussion, adopted a plan for a strike fund. The failure to inaugurate such a fund previously had been due to lack of any strong need for it. "The printing industry," says Professor Barnett, "was so essentially a local industry, and the conditions in different places varied so widely, that the printers of one town had little direct interest in assisting the printers of other places. The older and more powerful unions, feeling themselves able to

²⁵ Constitution, 1880-1881, art. vii, secs. 1-3.

²⁶ Proceedings, 1887, pp. 68, 71.

²⁷ Proceedings, 1894, p. 19.

²⁸ Local Constitution, 1910, secs. 112, 135, 136.

finance their own strikes, were unwilling to contribute to a fund which they feared would be used chiefly to support the smaller and weaker unions."²⁹ Even where the need of a national fund was obvious, objection was frequently made. An opponent of the establishment by the Stone Cutters in 1900 of a strike fund by an annual levy denounced the plan as all wrong "because such a fund would become a corruption fund, and would prove the rock upon which the National Union would go to pieces in the near future."³⁰

Not only is a national defense fund maintained by many unions, but at times a special defense fund is raised for a definite purpose. The Bricklayers and Masons, for instance, in 1907 found it necessary to work against the open-shop policy of the National Manufacturers' Association, and so instituted a non-union shop defense fund. A circular was sent out to all the local unions asking for donations and emphasizing the fact that there had been no extra assessments for sixteen years. The convention of 1908 laid an assessment of a dollar a year on each member for the next two years, and provided that the fund was to be used only in non-union shop districts. About \$44,000 was expended from this fund in 1908.³¹ A local union on strike in 1911, although it had not been organized a year as required for official strike sanction, was granted aid from this fund by the national officers.³²

Variations from the ordinary plan for a strike fund are found in the Cap Makers and in the Chain Makers. These unions have no national defense funds, and have endeavored to remedy the deficiency by making provision for local funds. The rules of the former union provide that every local union shall have in its treasury six months after it has been chartered the equivalent of two weeks' strike

²⁹ P. 36.

³⁰ Stone Cutters' Journal, October, 1900, p. 7.

³¹ Forty-second Annual Report of President and Secretary, 1907, pp. 419, 459; Proceedings, 1908, p. 199; Forty-third Annual Report of President and Secretary, 1908, p. 339.

³² Bricklayer, Mason and Plasterer, April, 1911, p. 75.

benefits for its members, and this sum may be raised by assessment.³³ The Chain Makers provided in 1908 that each of their local unions should raise a strike fund by requiring every member to pay a weekly amount specified by the local union. Members transferring to another local union may have their funds transferred upon depositing their cards. In case of a strike a member receives \$6 per week until his fund is exhausted. Every member must, however, pay into this fund until he has \$150 to his credit. Members withdrawing are not to receive their funds for six months, while in case of death the funds go to the nearest relative or are used for burial purposes.³⁴

The methods used by the Cigar Makers, the Iron Molders, the Flint Glass Workers, and the Operative Potters for the establishment and maintenance of strike funds are typical. Strike funds are accumulated (1) by a regular tax on every member; or (2) a certain percentage of all dues is so apportioned; or (3) special dues, such as those imposed for the initiation or reinstatement of members, are dedicated to the fund; or (4) special assessments are made from time to time.

(1) Among the unions levying an annual tax may be found the Iron, Tin and Steel Workers, the Elevator Constructors, and the Metal Polishers, who levy \$3 per year; the Railway Conductors, who levy \$2; the Brewery Workmen, the Railway Trainmen, the Iron Molders, and the Street and Electric Car Employees, who levy \$1.

(2) The amount set aside from the dues varies in different unions. The Sheet Metal Workers turn 5 cents of a 15 cents per capita tax per month into the fund.³⁵ The Tile Layers also set aside 5 cents per member per month.³⁶ The Tin Plate Workers appropriate 10 cents out of a per capita tax of 25 cents per month.³⁷ Thirty-eight per cent

³³ Constitution [n. d.], art. xvi, sec. 1.

³⁴ Proceedings, 1908, p. 68.

³⁵ Proceedings, 1901, p. 3.

³⁶ Proceedings, 1910, pp. 9, 25, 34. In addition to this membership tax, all local unions pay five dollars per quarter to be added to the defense fund.

³⁷ Constitution, 1908, art. vi, sec. 2.

of all income is thus used by the Boiler Makers,³⁸ thirty-three and a third by the Tobacco Workers,³⁹ and fifteen per cent by the Painters.⁴⁰

(3) Payments for initiation of members in local unions are in some unions turned into the defense fund. The Bricklayers and Masons, the Operative Plasterers, and the Stove Mounters receive one dollar for the fund for every new member, while the Railway Carmen receive two dollars. Special assessments may be laid by the general executive board in most unions for the defense fund in case of necessity or when the fund sinks below a certain amount.⁴¹

(4) There are still a number of unions which finance strikes partially or entirely by assessments. Strike assessments may be imposed (a) by a local union on its own members, (b) by a district lodge or district committee, (c) by the general executive board of the national union, (d) by a referendum vote of the entire membership, and (e) by a general convention. The assessment by a local union of its own members takes place, of course, only when a strike is a local one.⁴² The district lodge or district committee, which exists where there is more than one local union in a place, takes charge in some instances of a strike, as has been shown, and it has also power in a number of unions to lay strike assessments when necessary.⁴³ In some fifty national unions such assessments are made by the executive boards, which have general authority as to time and amount. In several unions the amount that may be

³⁸ Proceedings, 1908, p. 473.

³⁹ Constitution, 1905, sec. 34.

⁴⁰ Constitution, 1911, sec. 191.

⁴¹ The general executive board of the Boot and Shoe Workers was given authority in 1899 to raise a strike fund by a series of assessments to the amount of five dollars per capita (Proceedings, 1899, p. 38).

⁴² A local union of the Barbers levied an assessment of fifty cents per member on each member who was working (Journeyman Barber, August, 1911, p. 226). This rule is observed also by the Bakery and Confectionery Workers, the Brewery Workmen, the Glove Workers, and the Painters, and by those local unions which finance their own strikes.

⁴³ For example, the Boiler Makers, the Carpenters, the Painters, the Machinists, and the Brewery Workers.

so assessed is fixed by a general rule.⁴⁴ The referendum vote in the unions which require it covers either all strike assessments or those proposed assessments which are in excess of the amount fixed by a general rule.⁴⁵ A regular or a special convention of a national union in cases of general strikes orders a special assessment for the particular strike and authorizes the general officers to collect the same. Special movements, like the one against the open shop by the Bricklayers and Masons just described, or an effort to obtain a shorter working day, are generally preceded by action of the convention looking toward the accumulation of the sinews of war.

The Flint Glass Workers in 1887, on the prospect of a general strike, laid an assessment of \$1 a week on each member. This was raised to \$1.50 per week and then to \$1.75. In May, 1888, a flat assessment of \$16 was laid on each employed member. The United Mine Workers in 1902 during the anthracite coal strike imposed an assessment of ten per cent on the gross earnings of members in certain districts, of \$1 per week on members in other districts, and an assessment of twenty-five per cent upon the wages, salaries, or percentages received from the organization by all national, district, and subdistrict officers and organizers.⁴⁶ The Printers during the struggle for the eight-hour day from 1906 to 1908 collected by assessment \$2,800,000.⁴⁷ These assessments represent abnormal conditions. Ordinarily, assessments are much

⁴⁴ The Bookbinders, the Brick, Tile and Terra Cotta Alliance, and the Broom Makers fix the maximum at 25 cents per week; the International Seamen do not allow over \$1 per month per member, nor for more than three months in any one fiscal year; while in the Powder Workers and the Wood-Workers the amount prescribed is 50 cents and 25 cents a month respectively. The Bridge and Structural Iron Workers on account of the McNamara disclosures passed a resolution in 1911 that at any time of "crisis, disaster or fatality" there should be no limit set to assessments.

⁴⁵ The Boiler Makers in 1911 by a vote of 4773 to 1887 voted a ten weeks' assessment of \$1 per week per member for boiler makers and 50 cents per week for workers and apprentices (Boiler Makers' Journal, December, 1911, p. 1006).

⁴⁶ Proceedings, Special Convention, 1902, p. 47.

⁴⁷ Barnett, p. 80.

smaller, as shown by the following instances: The Commercial Telegraphers in 1908 taxed their members one day's pay;⁴⁸ the Carpenters and Joiners in 1911 made the first assessment in eight years, one of 50 cents per member; the Stove Mounters in 1906 laid a tax of \$1 per member, while in the same year the Iron Molders made an assessment of 10 cents a week, then three levies of \$1 each, and, finally, one of \$1 per month. The United Mine Workers in 1910 made a levy of 25 cents per week per member. The ordinary penalty for non-payment of such strike assessments by local unions or by members is suspension.⁴⁹

Although the collection of strike assessments has not ceased, the adoption of the strike fund in some one of its various forms has progressed so that today it is found in some sixty-five national unions as follows: the Amalgamated Woodworkers, the Bakers, the Barbers, the Brewery Workers, the Boot and Shoe Workers, the Bridge and Structural Iron Workers, the Bookbinders, the Blacksmiths, the Bricklayers and Masons, the Brick, Tile and Terra Cotta Alliance, the Broom Workers, the Boiler Makers, the Car Workers, the Cutting Die Makers, the Cap Makers, the Chain Makers, the Coopers, the Cigar Makers, the Carriage and Wagon Workers, the Cement Workers, the Commercial Telegraphers, the Elevator Constructors, the Granite Cutters, the Hatters, the Hotel and Restaurant Workers, the Iron, Steel and Tin Workers, the Industrial Workers of the World, the Iron Molders, the Locomotive Engineers, the Firemen, the Conductors, the Trainmen, the Metal Polishers, the Operative Plasterers, the Operative Potters, the Painters, the Pattern Makers, the Printers, the Photo-Engravers, the Plate Printers, the Railroad Clerks, the Railroad Telegraphers, the Railway Carmen, the Retail Clerks, the Stone Cutters, the Stove Mounters, the Street and Electric Railway Employees, the Slate Workers, the Stogie Makers, the Steam Engineers,

⁴⁸ Commercial Telegraphers' Journal, June, 1908, p. 340.

⁴⁹ The Cement Workers, one of the smaller national unions, imposed a strike assessment in 1910, and some seven local unions failed to pay and returned their charters (Proceedings, 1910, pp. 21-22).

the Steam Fitters, the Sheet Metal Workers, the Teamsters, the Tin Plate Workers, the Travelers' Goods and Leather Novelty Workers, the Theatrical Stage Employees, the Tile Layers, the Tobacco Workers, the Upholsterers, and the United Mine Workers.

Some unions provide a maximum limit to the growth of the fund as follows:

Street and Electric Railway Employees, 1903...	\$ 100,000
Street and Electric Railway Employees, 1907 ⁶⁰ ..	1,000,000
Locomotive Engineers ⁶¹	500,000
Railway Conductors ⁶²	200,000
Railway Trainmen ⁶³	300,000
Elevator Constructors ⁶⁴	50,000
Operative Plasterers ⁶⁵	50,000
Stone Cutters ⁶⁶	4,000
Cutting Die and Cutter Makers ⁶⁷	300
Sheet Metal Workers ⁶⁸	2,000
Chain Makers ⁶⁹ per member.....	150

Other unions provide that a certain minimum amount must be kept:

Brewery Workmen ⁶⁰	\$25,000
Granite Cutters ⁶¹	25,000
Tin Plate Workers ⁶²	10,000
Slate Workers ⁶³	300
Wood Carvers, ⁶⁴ per member.....	1

The ordinary procedure is to continue strike dues until

⁶⁰ Proceedings, 1903, pp. 14, 35; 1907, p. 64.

⁶¹ All over \$50,000 to be applied to Brotherhood of Locomotive Engineers' Building (Constitution, 1910, sec. 46).

⁶² Proceedings, 1891, pp. 341-347; Constitution, 1909, sec. 75.

⁶³ Protective Fund, Rule no. 16.

⁶⁴ Proceedings, 1904, pp. 10, 11.

⁶⁵ The Plasterer, August, 1911, p. 18.

⁶⁶ Constitution, 1909, art. vi, by-laws, art. xvii.

⁶⁷ Constitution, 1911, art. xvi, sec. 5.

⁶⁸ Proceedings, 1905, p. 353.

⁶⁹ Proceedings, 1908, p. 68.

⁷⁰ Constitution, 1910, art. xiii, sec. 4.

⁷¹ Constitution, 1909, sec. 18.

⁷² Constitution, 1908, art. vi, sec. 4.

⁷³ Constitution, 1906, art. xi, sec. 2.

⁷⁴ Constitution, 1908, p. 16.

the maximum amount is reached and to lay a special assessment when the amount falls below the minimum set. The Amalgamated Association of Iron, Steel and Tin Workers requires, however, that not less than ten thousand dollars shall be in the national treasury in order that benefits may be paid.⁶⁵

The status of the strike funds in some ten unions, shown by the amounts on hand at a certain time, was as follows:

Bakers, April 1, 1911.....	\$ 30,516.06
Barbers, July 1, 1911.....	15,362.17
Boot and Shoe Workers, 1909.....	151,626.53
Bridge and Structural Iron Workers, June 30, 1910.....	33,103.37
Flint Glass Workers, Sept., 1911.....	96,000.00
Hotel and Restaurant Workers, Jan. 1, 1909...	21,294.77
Locomotive Firemen, Jan. 1, 1911.....	352,752.54
Painters, Jan. 1, 1911.....	14,529.67
Operative Potters, June 1, 1910.....	320,163.58

The variation in amounts is due to the length of time the fund has been established, the number of members, and the dues paid into the fund. The amount of the fund of the Bakery and Confectionery Workers since its institution in 1904 has been as follows:⁶⁶

Oct. 1, 1905, balance on hand.....	\$ 142.10
" 1, 1906, " " "	2,847.00
Sept. 1, 1907, " " "	20,466.17
" 1, 1908, " " "	36,583.01
" 1, 1909, " " "	39,040.31
" 1, 1910, " " "	12,816.06
Jan. 1, 1911, " " "	23,884.01

The Boot and Shoe Workers, the Locomotive Firemen, and the Operative Potters report the largest amounts on hand. These three unions allow no independent strikes, have high dues, and exercise a larger degree of central control than do most of the others. On the other hand,

⁶⁵ Constitution, 1910, art. x, sec. 4.

⁶⁶ The Bakers' Journal, January 14, 1911, p. 66.

the Barbers, the Hotel and Restaurant Workers, and the Painters allow a large measure of autonomy to their local unions.

On account of the general tendency among new local unions to agitate grievances which may result in strikes and exhaust the strike fund, many national unions provide for a certain definite length of time before a local union may receive strike benefits. A few, like the Blacksmiths and the Cutting Die and Cutter Makers, give benefits at once, but the general rule is that the local union must be affiliated with the national union for from three months to one year before benefits can be given.⁶⁷ In 1886 the Flint Glass Workers provided that the local union must be organized six months to receive strike aid, and in the following year waited for the expiration of six months before submitting one case to a general vote.⁶⁸

Not only must the local union have been organized a minimum time, but in a number of national unions individual members must be in good standing at general headquarters as to dues and must have been affiliated for a certain length of time.⁶⁹ In some unions, like the Machinists, an elaborate card catalogue of all members is kept by the general secretary-treasurer, and no benefits are paid unless all obligations have been met. The Stone Cutters provided in 1900 that members not in good standing at headquarters should forfeit all claims to strike benefits,

⁶⁷ The Brick, Tile and Terra Cotta Workers' Alliance, the Coopers, and the Rubber Workers require three months; the Bookbinders, the Bakers, the Car Workers, the Flint Glass Workers, the Metal Polishers, the Operative Potters, the Sheet Metal Workers, and the Teamsters, six months, and the Bricklayers and Masons, the Elevator Constructors, the Photo-Engravers, and the Stone Cutters, one year. The rule of the Elevator Constructors excepts strikes called by a central body (Proceedings, 1903, p. 30). The Operative Potters allow benefits to a local union organized less than six months if the strike is approved by a majority vote of the trade (Constitution, 1910, sec. 60).

⁶⁸ Proceedings, 1887, p. 19; Constitution, 1886, art. viii, sec. 3.

⁶⁹ Such rules are enforced by the Boiler Makers, the Machinists, the Plumbers, the Steam Fitters, the Stone Cutters, the Teamsters, and the Tile Layers. The Boiler Makers, however, in 1900 repealed the rule requiring a striker to be a member six months before receiving strike benefits as being both unjust and unfair. All general dues must, however, be paid (Proceedings, 1900, p. 255).

and a general officer wrote in 1903 that the central office was the guide as to strike pay, "as there would be no end of trouble if we could interpret it any other way."⁷⁰

Benefits are usually paid only to those who have been working when the strike is declared. In some unions the strike must be a general one. The Bricklayers and Masons⁷¹ provided in 1903 that no benefits should be paid unless seventy-five per cent or more of the membership of a local union were engaged in a regularly approved strike.

The amount of the strike benefit paid varies:

Amount of benefit	Number of Unions paying
\$14.00 per week	1
10.00 " "	3
8.00 " "	2
7.00 " "	15
6.00 " "	13
5.00 " "	22
4.50 " "	1
4.00 " "	1
3.00 " "	4

The principal railroad brotherhoods pay monthly strike benefits, as follows: Locomotive Engineers and Locomotive Firemen \$40, Conductors \$50, and Trainmen \$35.

Several do not pay a flat rate, but have established a maximum of \$5 or \$6 per week, the amount being determined by the general executive board according to the circumstances and the condition of the treasury. Some unions, such as the Carpenters, the Electrical Workers, the Glove Workers, the Hotel and Restaurant Workers, and the Sheet Metal Workers, do not pay a fixed weekly benefit, but send at intervals to the local union on strike lump sums to be divided among the strikers. A referendum vote in the Hotel and Restaurant Workers in 1905 declared against a fixed strike benefit.⁷² The general

⁷⁰ Constitution, 1900, art. vii, sec. 12; Stone Cutters' Journal, May, 1903, p. 2.

⁷¹ Proceedings, 1903, pp. 115, 116. The executive board refused to grant forty-four appeals for financial assistance from 1908 to 1910, because the facts set forth in the appeals did not make it clear that aid from the general office was necessary (Proceedings, 1910, p. 241).

⁷² Mixer and Server, September 15, 1905, p. 9.

secretary of the Painters, in discussing the subject, doubted the wisdom of a fixed benefit in his union because of its cost.⁷³ The Tile Layers, partly on account of lack of funds, partly because they believed "that all just demands can be enforced without the necessity of striking when properly handled," eliminated in 1903 the provision for a definite benefit, and provided for financial assistance by unanimous vote of the general executive board. The general council of the Amalgamated Woodworkers reported in 1904 that although \$5 per week was the benefit established by law, special circumstances compelled them to donate only that amount which the condition of the general treasury would permit.⁷⁴ Other variations from a fixed rate are found in the Retail Clerks, who pay in proportion to the wages received, and in the Horseshoers, where the amount, although paid by the national union, is fixed by the local union at the rate established by the local union before going out on strike.

As will be seen from the table on page 103, the amount paid in some fifty unions is from \$5 to \$7 a week. Fifty-two unions pay the same rate to both married and single men, but twenty pay \$2 a week more to married men than they do to single men. In some cases \$1 a week is paid for the wife and 50 cents a week for each non-sustaining child. Naturally a man with a family needs a larger benefit, and such preferential treatment was accorded by the Philadelphia Cordwainers in 1806⁷⁵ and the Knights of St. Crispin in 1870.⁷⁶ An occasional dissenting voice, however, is raised against such preference: "Married men and single men should be paid alike. A man's fortune or misfortune of having a wife or not having one should not be considered."⁷⁷ Women, on the other hand, together with apprentices, are paid about half the sum paid men in the Bookbinders, the Travelers' Goods and Leather Novelty

⁷³ Painter and Decorator, December, 1909, p. 756.

⁷⁴ Proceedings, 1904, p. 16.

⁷⁵ Commons and Gilmore, vol. iii, p. 83.

⁷⁶ Lescohier, p. 67.

⁷⁷ Stone Cutters' Journal, February, 1900, p. 11.

Workers, the Paper Makers, the Machinists, and the Photo-Engravers.

Additions to the stated benefits are made at times. The Brewery Workers in 1905 paid an additional \$2 a week to striking members in the West because it was "impossible for any man to exist on \$5. per week on the Pacific Coast."⁷⁸ Local unions, also, when able, pay benefits in addition to those of the national union. The Flint Glass Workers allow striking members working outside of the trade to bring their earnings up to \$15 per week, including strike benefits. On the other hand, the usual custom is to deduct from the strike pay all dues that may be in arrears.

Although some unions pay their striking members benefits from the beginning of the strike or from the time of sanction by the national officers, the rule in twenty-five unions is to throw the local union upon its own resources for the first week, while some twelve unions pay nothing for the first two weeks. In a few others the time is extended to three weeks or four weeks or thirty days. But discretion is used at times in regard to the time of beginning benefits and, as expressed by Secretary Kempner of the Brewery Workmen, "common sense" is used and regard is had for the condition of members. The Brotherhood of Railroad Trainmen during a strike in 1907 paid for the first two weeks "on account of the financial condition of the men and as a matter of good policy."⁷⁹

The amount of benefits is changed in some unions, as the Cigar Makers, the Piano Workers, the Plumbers, and the Travelers' Goods and Leather Novelty Workers, after a certain time, varying from eight to sixteen weeks, has elapsed. A reduction of two dollars a week or more is then made, the reduced benefit being paid until the end of the strike.⁸⁰ The larger number of unions, however, continue to pay the same original benefit until the strike is either won or declared off, or for a certain definite period

⁷⁸ Proceedings, 1906, pp. 100-104.

⁷⁹ Proceedings, 1909, p. 3.

⁸⁰ This provision was adopted first by the Cigar Makers and has been frequently copied (Constitution, 1886, art. vi, sec. 1).

which may be extended, or during the discretion of the general officers. The setting of a time limit is based not only on the idea of conserving the resources of the national union, but also on the belief that most strikes are won or lost within a few weeks. The tendency, however, is to allow the national officers freedom to act according to the conditions surrounding a particular strike. By withdrawing strike benefits the national officers virtually end a strike.⁸¹

The value of a time limit is seen in the experience of the Flint Glass Workers, who reported in 1892 that some strikers had been carried on the benefit rolls for nearly four years. In 1897, on account of the industrial depression and numerous strikes, all men carried on strike benefits for more than a year were cut off, and in 1911 a resolution was passed that "in no case shall they be carried on the relief roll longer than one year unless by a vote of the trade."⁸² The Bricklayers and Masons also financed a struggle for the nine-hour day by two local unions in North Carolina in 1904-1905 for eighty-seven weeks at a cost of \$19,464.60 for benefits.⁸³ The convention of the national union has voted in some cases to extend the time, and the officers in the exercise of their discretion usually have power to prolong the payment of benefits.

Even when a strike is won or called off, benefits are usually paid to some members until they find work, and more especially to members of advanced age who are unable to find employment at the trade after the termina-

⁸¹ The general executive board of the Amalgamated Association of Street and Electric Railway Employees in 1911, after benefits for strike had been paid for twenty-five weeks, believed it was time to bring the strike to a close and so declared the strike off. But finally they allowed the strike to go on with national benefits and permitted an appeal for aid to be sent out (Proceedings, 1911, p. 27).

⁸² Proceedings, 1897, p. 17; 1911, p. 181.

⁸³ Fortieth Annual Report of President and Secretary, 1905, p. 396. "These brothers down in Durham," said a commentator, "are too dependent, and show no spirit of self-reliance, which is a very bad feature, and tends to promote a feeling in neighboring towns to look for financial aid" (Forty-first Annual Report of President and Secretary, 1906, p. 62).

tion of the strike.⁸⁴ In 1910 the Machinists continued the benefits to twelve members over sixty years of age for one hundred and thirty weeks, each receiving aggregate benefits of \$1009.⁸⁵ The Locomotive Engineers in 1904 had twenty-two still on the benefit roll from the Burlington strike of 1888, and in 1911 there were sixteen still left. The benefits are \$25 per month, and have been continued in some instances to widows of deceased strikers. From two other strikes there were left in 1904 twelve and three pensioners, respectively.⁸⁶

In order to systematize payment and to guard against fraud many unions provide blank strike pay rolls for the strike officials and members to fill out and return to headquarters at stated periods. The Bricklayers and Masons at the request of their secretary provided such a form as early as 1869, and this form has been copied by other unions. Such pay rolls were to be made out in triplicate for the secretary of the national union, the secretary of the subordinate union, and the paymaster making payments. A local union receiving permission to strike was directed to elect a receiver, a clerk, and a paymaster. The duty of the clerk was to make a monthly statement and at the end of the strike a complete account for the secretary of the national union and for publication.⁸⁷ The form used today in some twenty typical unions varies but little. The signature of the striker, the number of his union card, the time and amount of benefits, countersigned by two officials on the ground, are usually required. The Iron Molders provide for attestation by the paymaster and the clerk, the Bricklayers and Masons by the local financial secretary and the special deputy paymaster; but the Carpenters and Joiners require only the signature of the chairman of the strike committee. A customary usage is to print the rules

⁸⁴ The Metal Polishers extended benefits thus by vote of the executive board for two members (*Our Journal* [Metal Polishers], January, 1911, p. 24). See also *Boot and Shoe Workers' Journal*, 1895, p. 43.

⁸⁵ *Machinists' Monthly Journal*, February, 1910, p. 153.

⁸⁶ *Proceedings*, 1904, p. 7.

⁸⁷ *Proceedings*, 1869, pp. 45, 109.

governing the payment of strike benefits on the pay roll for the guidance of the disbursing officials.⁸⁸ Either the representative of the national union or an official designated by the district committee or by the local committee ordinarily acts as a disburser of the fund. Officers receiving and paying strike benefits are sometimes required to give a bonded security. Should any intimation of fraud be made, benefits are usually suspended pending an investigation. Receipts are taken for all benefits paid, and the return to the general officers of strike rolls properly filled out, usually every week, is insisted upon as the condition for further strike pay.

Another form of benefit is that paid for "victimization," that is, for cases in which a member is discharged because of serving on a grievance committee or being active in any way in trade-union matters. The Granite Cutters in 1877 provided that such members should receive full compensation for their loss and be aided in seeking work; but when work was found, whether accepted or not, benefits should cease.⁸⁹ Some unions provide that "victimization" cases shall be governed by the same rules as apply to strikes and

⁸⁸ The Iron Molders have these rules:

"Decision 17. No person can be put on strike pay-roll who was not at work in the shop when the strike took effect.

"Decision 18. A member on pay-roll securing work must be taken off the rolls.

"Decision 19. A member on strike who has been taken off the pay-roll on account of securing work can only be placed on the rolls again, if, after investigation by the President of the I. M. U. of N. A. or his deputy, it is found to be for the best interest of the I. M. U. of N. A.

"Decision 20. A member on strike drawing a card for the purpose of looking for work, and failing to find same, may be placed on the rolls again from the date of his return, but in so doing the case must be so explained when sending pay-roll to the Secretary.

"Rule 8. The Paymaster and clerk must send to the Secretary of the I. M. U. of N. A. on each pay-roll, their affidavit that every name on said pay-roll is entitled to benefits according to our laws, and that they are actively engaged in said strike or lockout, and are not employed at some other occupation.

"Rule 9. In the event of its being discovered that any local disbursing officers are found guilty of falsifying the pay-rolls, it shall be mandatory for the President of the I. M. U. of N. A. to prosecute them."

⁸⁹ Constitution, 1877, art. xv.

that regular strike benefits shall be paid.⁹⁰ In other unions aid varies from temporary assistance to a definite sum for a short period.⁹¹

Lockouts, when sanctioned by the national officers, are considered strikes and regular strike benefits are paid. A lockout, however, may be brought on by the arbitrary conduct of the union, and the national officers may have power to refuse benefits if the union has been in fault. Lockouts, like strikes, are investigated by the national officers, and the same rules are followed. "An 'iron clad' notice shall not constitute a lockout. Should any employer be unscrupulous enough to require employees to sign individual contracts, under threat of lockout, members are directed to sign them and report the same to their Local Executive Board. The Local Executive Board shall report the same to the General Executive Board as in strikes."⁹²

As a method of relieving the strain on the defense fund, several unions, such as the Bakers, the Barbers, the Bookbinders, the Brewery Workmen, the Broom Makers, the Flint Glass Workers, the Machine Printers, the Photo-Engravers, the Plate Printers, the Operative Potters, the Stogie Makers, the Teamsters, and the Wood Carvers, explicitly provide that any member refusing work when it is offered during a strike shall be cut off from strike benefits. The general executive board of the Flint Glass Workers, for instance, after the adoption of a sliding scale in 1905 in the chimney department, which was accompanied by a revival of trade and work, forced the off-hand gatherers who had been on strike to go to work as chimney gatherers or be cut off the relief roll. Some forty-five members of two local unions were struck off the relief roll on account of their refusal to accept work.⁹³ The Barbers in 1911 thus

⁹⁰ The Boiler Makers, the Broom and Whisk Makers, the Iron Molders, the Machinists, the Pattern Makers, the Stogie Makers, and the Travellers' Goods and Leather Novelty Workers follow this rule.

⁹¹ Proceedings, Boot and Shoe Workers, 1899, p. 37; Cap Makers, Constitution [n. d.], art. x, sec. 14; Tin Plate Workers, Constitution, 1908, art. ix, sec. 1.

⁹² Proceedings, Boot and Shoe Workers, 1899, p. 37.

⁹³ Proceedings, 1906, p. 32.

withdrew aid from members who refused work in a union shop at the minimum wage scale. Strikers who have part-time work are in some unions debarred from benefits. The Carriage and Wagon Workers, the Stove Mounters, and the Teamsters count three days' work as a week, while the Photo-Engravers and the Plate Printers regard four days as a week and deduct a week's benefit. For less than four days one fourth is deducted by the Photo-Engravers from the week's benefit for each day of work. The Bakery and Confectionery Workers allow a member to do jobbing for a week without loss of benefits.⁸⁴

After a member has obtained work he cannot receive strike benefits again. In some unions a time limit of two to four weeks of continuous employment is set, after which the striker's name cannot be put back on the strike roll. In other unions a striker may be granted benefits again after securing work and being laid off, provided it be within the time limit for the payment of benefits. The Stove Mounters passed such a rule in 1908 because otherwise a member on strike would be discouraged from accepting employment unless certain as to the permanency of the work.⁸⁵

In addition to strike benefits or in lieu of them a local union may receive donations from other local unions. Appeals for assistance must, however, be sanctioned by the national officers, according to the specific rules of some twenty-five unions. President Fox of the Iron Molders protested in 1902 that all such circulars should be submitted to the president before being sent out. To make control of the local union more certain all funds donated, according to the rules of some unions, must be sent to headquarters and from there to the local union in need.

⁸⁴ Strike Instructions: "If a striker secures a steady position and leaves said position after one week, all strike benefit will cease. Whenever a striker refuses to accept a steady position, strike benefit also ceases. Jobbing a week is not considered as a steady position. The strike benefit official must report every week to the International Treasurer whenever a member goes to work, whether he is jobbing or has steady work" (Bakers' Journal, May 13, 1911, p. 3).

⁸⁵ Proceedings, 1908, pp. 15, 37.

But even when there is no specific rule, voluntary donations are usually handled by the general treasurer and acknowledged in the union's journal. Such central control puts the money in charge of one person instead of several, and makes possible the immediate withdrawal of the appeal when enough has been received or the strike ended.

An appeal may be allowed when the limit of benefits from the national union has been reached, or in case the national union pays only a small benefit or no benefits at all, or for disputes which are not sanctioned as complying sufficiently with the strike rules to be supported by regular strike benefits but which nevertheless deserve some support, or when the treasury of the national union is low. The executive board of the Bricklayers and Masons, for example, in 1904 gave permission to solicit donations to a local union out on an unsanctioned strike as a protest against the "open shop policy" and the "relentless and unscrupulous attitude of the employers."⁹⁶ In 1909 three circulars were issued by the general officers of the Brick, Tile and Terra Cotta Workers' Alliance requesting help for one of their local unions similarly situated. The Rubber Workers permit voluntary donations to be given a local union out on strike before it has been affiliated for the three months required for the receipt of strike benefits.⁹⁷

Strike benefits paid over a series of years amount in some unions to very large sums. The Flint Glass Workers reported in 1898 that \$1,768,641.93 had been thus paid out since their organization in 1878. The Burlington strike of 1888, with a few pensioners still on the roll, has cost the Locomotive Engineers over a million dollars (\$1,008,153.17). The Machinists from 1891 to 1910 have paid some \$2,023,231.19; and in addition to this, district lodges have paid benefits in large sums to those not included in the membership or to members not in good standing with the grand lodge. The Iron Molders have always been an

⁹⁶ Thirty-ninth Annual Report of the President and Secretary, 1904, p. 474.

⁹⁷ Constitution, 1910, art. xiii, sec. 4; 1903, art. x, sec. 1.

aggressive and militant organization, and during the period from 1860 to 1875 spent the following amounts:

1860.....	\$ 5,511.60
1861.....	1,115.00
1863.....	10,329.89
1864.....	3,000.00
1865.....	3,300.00
1866.....	25,000.00
1867-68.....	9,500.00
1868-9-70.....	5,350.00
1870-1-2.....	32,209.78
1872-3-4.....	20,788.82
1874-5.....	8,622.46

or nearly \$125,000, during the fifteen years.⁹⁸ After 1884 the benefits gradually increased in amount, as is shown in the following table:

Period	Length of Period	Cost	Average Yearly Cost
1884-86	2 years	\$ 28,800.40	\$ 14,400.20
1886-88	2 years	33,883.54	16,941.77
1888-90	2 years	67,964.32	33,982.16
1890-95	5 years	209,907.52	41,981.10
1895-99	4 years	175,870.20	43,967.55
1899-02	3 years	327,961.68	109,320.56
1902-07	5 years	1,477,009.46	295,401.89
1907-11	4 years	1,009,322.15	252,330.54

The total cost for the twenty-seven years since 1884 has been \$3,338,202.76. The increased expenditures, especially since 1890, are attributable to actual payments of strike benefits (for previously benefits had frequently been unpaid), the centralization of control which has thrown the entire cost on the national union, and the growing opposition of manufacturers to unionism in general and the Iron Molders in particular. The opposition of the National Founders' Association in 1900 and in 1904 increased greatly the cost of strikes.

The United Mine Workers report the following strike benefits as paid from 1900 to 1910:

1900.....	\$ 144,462.50
1901.....	202,202.71
1902.....	1,834,506.53

⁹⁸ Counting the average membership at five thousand per year, says one commentator, "the strikes cost less than two dollars per year" (Iron Molders' Journal, September 10, 1875, p. 424).

1903.....	301,922.44
1904.....	1,065,435.47
1905.....	753,626.02
1906.....	805,599.92
1907.....	105,045.57
1908.....	744,897.19
1909.....	600,267.39
1910.....	1,532,020.42
	<u>\$8,089,986.16</u>

Most of the money is said to have been spent in localities where there was the least organization. Strikes as a means of organization are declared to be too expensive. "The enormous waste of money," said President Lewis, "and the tremendous waste of energy incident to a strike should be avoided. Our right to strike must never be surrendered, but as the strike is an industrial war measure it should be the last method resorted to in our effort to enforce any demands that we present to the mine owners."⁹⁹

The Bakery and Confectionery Workers have had numerous small strikes, and make the following report of benefits paid since the inauguration of the strike fund in 1904.¹⁰⁰

Oct. 1, 1904, to Oct. 1, 1905, 1 year.....	\$ 14,355.30
" 1, 1905, " Sept. 1, 1906, 11 months.....	26,175.50
Sept. 1, 1906, " " 1, 1907, 1 year.....	10,974.00
" 1, 1907, " " 1, 1908, 1 year.....	7,895.00
" 1, 1908, " " 1, 1909, 1 year.....	14,553.00
" 1, 1909, " " 1, 1910, 1 year.....	66,845.00
" 1, 1910, " Jan. 1, 1911, 4 months.....	1,053.00
Total Benefits Paid.....	<u>\$141,850.80</u>

The expenditures of the Coopers for strike benefits from 1900 to 1910 were as follows:

Period	Length of Period	Cost	Average Yearly Cost
1900-02	2 years	\$ 4,793.10	\$2,396.55
1902-04	2 years	8,487.57	4,243.78
1904-06	2 years	13,230.05	6,615.02
1906-08	2 years	3,373.10	1,686.50
1908-10	2 years	4,550.50	2,275.25

The higher cost in 1904-06 was not due to an increase in the number of strikes or strikers, but because strikes were

⁹⁹ Proceedings, 1911, p. 50.

¹⁰⁰ Bakers' Journal, January 14, 1911, p. 66.

better financed than before. The next four years show the result of larger control of strikes by the general executive board.¹⁰¹

The Cigar Makers have paid out the following sums since the inauguration of a strike fund in 1879:

Year	Strike Benefit	Cost per member per year
*1879	\$ 3,668.23	\$ 1.34 ⁴ / ₁₀
1880	4,950.36	1.11 ⁴ / ₁₀
†1881	21,797.68	1.40 ³ / ₁₀
‡1882	44,850.41	3.92 ³ / ₁₀
1883	27,812.13	2.10 ³ / ₁₀
1884	143,547.36	12.62 ³ / ₁₀
1885	61,087.28	5.09
1886	54,402.61	2.20
1887	13,871.62	6.74
1888	45,303.62	2.66 ⁴ / ₁₀
1889	5,202.52	.20 ³ / ₁₀
§1890	18,414.27	.74 ⁷ / ₁₀
1891	33,531.78	1.38 ⁴ / ₁₀
1892	37,477.60	1.40 ⁴ / ₁₀
1893	18,228.15	.68
1894	44,966.76	1.61 ⁶ / ₁₀
1895	44,039.06	1.58 ³ / ₁₀
1896	27,446.46	1.00 ⁴ / ₁₀
¶1897	12,175.09	.46
1898	25,118.59	.94 ³ / ₁₀
1899	12,331.63	.42
1900	137,823.23	3.98 ³ / ₁₀
1901	105,215.71	3.02
1902	85,274.14	2.23 ⁴ / ₁₀
1903	20,858.15	.51 ³ / ₁₀
1904	32,888.88	.76 ⁶ / ₁₀
1905	9,820.83	.23 ⁷ / ₁₀
1906	44,735.43	1.10 ³ / ₁₀
1907	22,644.68	.52 ³ / ₁₀
1908	32,423.39	.77 ³ / ₁₀
1909	19,999.58	.43 ³ / ₁₀
1910	221,044.70	4.90 ³ / ₁₀

* Weekly dues 10 cents, † 15 cents, ‡ 20 cents, § 25 cents, ¶ 30 cents.

The total cost of strikes from 1879 to 1910 was \$1,432,-951.93.¹⁰² The largest cost per member occurred in 1884

¹⁰¹ Coopers' International Journal, October, 1910, p. 561; November, 1906, p. 10.

¹⁰² Cigar Makers' Official Journal, April 15, 1911, p. 11.

on account of a disastrous strike in Cincinnati entered into against the protests of the general officers, and amounted to \$12.62 $\frac{3}{4}$. The strike committee reported at the 1885 convention against such large expenditures, and said: "It is neither wise nor practical to at all times strike, even against a reduction in wages." The rules in regard to strikes were at that time revised and made more rigid.¹⁰⁸

¹⁰⁸ Proceedings, 1885, p. 23.

CHAPTER VIII

THE TERMINATION OF STRIKES

The development of the power to end a strike has been much the same as that of the power to initiate a strike. From the nature of the case, however, the rules are less rigidly enforced, especially if a favorable settlement can be made.

Many strikes have no official end because the men gradually get work elsewhere. A strike of the Horseshoers in New York City, for instance, was declared eight years ago and has never been called off. Such a strike, of course, has no real existence. A strike may be ended (1) by a vote of the local union or local unions involved, (2) by action of the representative or agent of the general union, (3) by the general executive board of the national union, (4) by a general vote, or (5) by a convention of the national union.

(1) The vote by the local union or local unions is found in those trades where the local union has the right to strike on its own initiative. In those unions where there is a large measure of control by the national officers, the vote of the local union becomes effective only with the consent of the national officers. The usual rule is that a regular or special meeting of the local union must be held and the terms of settlement submitted to a vote. Some national unions require the same vote for concluding as for initiating a strike; others require only a majority vote. The vote of a local union in favor of ending a strike is not always sanctioned by the national officers. In 1908 the officers of the Stove Mounters declared in regard to a strike called off by one of their local unions: "The International Executive Board has never sanctioned the calling off of this strike, because the Mounters who secured employ-

ment were forced to sign an individual contract and work with helpers."¹

(2) The representative or agent of the national union, as has been noted, is sent to the scene of the trouble as soon as a dispute arises, and he usually remains until the strike has been settled. The power of the general agent in the termination of strikes appears to have grown out of the practice of local unions in sending for their general president when in trouble. Grand Chief Arthur of the Locomotive Engineers brought about a settlement of several strikes by personal efforts and conferences with railroad officials, and today, although the matter is usually put to a vote, the general officers of this brotherhood may terminate a strike.² The same is true of the grand master of the Locomotive Firemen, with the consent of a majority of the members of the executive board.³ The president of the Conductors, together with the general committee of adjustment, has similar powers.⁴ President W. J. Smith of the Flint Glass Workers in 1887 in conjunction with a committee of the local union brought to an end a strike that had been going on for a year.⁵ The presidents of the Boiler Makers, the Stone Cutters, and other unions intervene in like manner when the necessity arises.

On account of a disastrous strike in 1884-1885, the Cigar Makers adopted the device of arbitration and the sending of agents to the scene of any strike. In 1906 the national union sent two representatives to adjust a dispute. The local union did not desire the presence of these two officials, Ex-President Strasser and W. S. Best, who finally reached an agreement with the manufacturers and brought the strike to an end. The local union had the right to an appeal to a general vote against the action of the general repre-

¹ Proceedings, 1908, p. 8.

² Locomotive Engineers' Monthly Journal, May, 1875, p. 255; January, 1877, p. 29; February, 1877, pp. 65-71.

³ Locomotive Firemen's Magazine, November, 1894, p. 1079. This in case two thirds of the members refuse to declare a strike off.

⁴ Constitution, 1909, sec. 74. A strike on the Erie Railroad in 1891 was settled by Grand Chief Conductor Clark and the national officers (Railway Conductor, February 15, 1891, p. 127).

⁵ Proceedings, 1887, p. 29.

sentatives, but contented itself by protesting in the columns of the official organ. Agent Strasser said: "The duty of the arbitrators and agent is to represent the interests of the International Union, regardless of the local instructions of the strike committee. It is also their duty to bring about an amicable and honorable adjustment of the trouble as speedily as possible, thus saving the funds of the International Union, which would be otherwise wasted; and to maintain the honor and reputation of the International Union for fair dealing with union manufacturers."⁶ The decision of the representatives of the national union to terminate a strike in New Haven was approved by the executive board and then by a general vote.⁷ In 1892 the executive board of the Bricklayers and Masons was authorized to send a deputy to the scene of any strike to investigate and report as to prospects of success, and if these reports were unfavorable the board was to declare the strike off.⁸ Such procedure is a common practice in most unions, and in most cases the general representative acts in conjunction with the local officials. A common rule is that final settlements must be made in the presence of the local committee.⁹

The duties of a representative in the Stone Cutters' Union is defined thus: "He shall immediately proceed to the headquarters of said Branch where strike or lockout exists and give them assistance within his power to settle said strike or lockout, final decision to be given by the Executive Board."¹⁰ A good deal of authority is given to the general representative. His decisions are binding in some unions and subject to approval of the executive board or a general vote in others.

When a number of national unions are involved in a strike, a settlement is usually brought about by the officials

⁶ Cigar Makers' Official Journal, September 15, 1906, p. 3.

⁷ Ibid., February 15, 1909, p. 8. This same procedure is followed by the Plumbers and the Tobacco Workers.

⁸ Proceedings, 1892, p. 96.

⁹ Stove Mounters, Proceedings, 1901, p. 12; Paper Makers, Constitution, 1912, art. vi, sec. 2.

¹⁰ Proceedings, 1904, p. 33.

of the various unions. In the settlement of a general strike in the shops of the Missouri Pacific Railway system in 1910, terms of settlement were signed by the national officers of the Machinists, the Boiler Makers, the Blacksmiths, and the Sheet Metal Workers.¹¹ A general strike by the employees of the International Paper Company in 1910 was terminated by an agreement signed by the officers of the company and by representatives of the Paper Makers, the Pulp Sulphite and Paper Mill Workers, the Machinists, the Steam Fitters, the Steam Engineers, the Electrical Workers, a general organizer of the American Federation of Labor, and the chairman of the Bureau of Mediation and Arbitration of the State of New York.¹²

(3) The representative or agent is usually sent by the general executive board of the national union, and in that board the supreme executive authority of the union is vested. As previously stated, the board is made up of the national officers, including the president, and, in some unions, of additional representatives from the general membership. The tendency is toward a larger measure of control by this body in termination of strikes. The Iron Molders saw the necessity of some central control in bringing unsuccessful strikes to a close, and in 1874 vested such power in the president and four vice-presidents.¹³ Two strikes were settled by these officers during 1874-1876. The president in his report in 1876 said that "he had no extraordinary power as he must consult with and abide by the wishes of the four vice-presidents." A provision for two weeks' notice to the local union on strike was added to the rules at this convention, and in 1878 the power was transferred to the president and the executive board.¹⁴

In some unions action to stop a strike has been taken by the national officers on their own responsibility because conditions rendered it necessary to terminate the strike. For

¹¹ Machinists' Monthly Journal, February, 1911, pp. 113, 160.

¹² Report of the New York State Department of Labor, 1910, pp. 474-480.

¹³ Iron Molders' Journal, August, 1874, p. 4.

¹⁴ Proceedings, 1876, pp. 7, 82.

example, the officials of the Flint Glass Workers called off a strike in 1886 and declared strike benefits at an end. The strikers protested against this action; but similar decisions were quoted as precedents, and as these precedents had passed unquestioned by any convention a warrant for them was thus given. The result was that authority to terminate strikes was given to the executive board.¹⁵ The Locomotive Firemen provide that in case two thirds of the members on a division or system refuse to declare a strike off, it can be ended by the grand master together with a majority vote of the general executive board. In case the president and the general committee of adjustment of the Conductors cannot agree, the board of trustees of that union, after a strike has been in force ten days, can decide, and their decision is final.¹⁶ A number of unions, like the Barbers, the Boot and Shoe Workers, the Box Makers, the Bricklayers and Masons, the Bridge and Structural Iron Workers, the Cutting Die and Cutter Makers, the Freight Handlers, the Lace Curtain Operatives, the Metal Polishers, the Pattern Makers, the Iron, Tin and Steel Workers, the Retail Clerks, the Stogie Makers, the Stone Cutters, the Tile Layers, the Tin Plate Workers, the Powder Workers, and the Woodworkers, give their executive boards definite power to end a strike. In some unions a strike by a local union may be appealed directly to the national union by the firm or company against which the strike is called. In the case of a firm in Denver whose bricklayers refused to handle material made by a certain manufacturer, the executive board of the Bricklayers and Masons ordered the strike off.¹⁷

The real power of the general executive board is found in its control of strike benefits. If there are no strike benefits, the local union on strike can accept or reject the advice of the executive board. The development of this control has been traced in previous chapters. Where

¹⁵ Proceedings, 1887, pp. 30, 80.

¹⁶ Locomotive Firemen's Magazine, November, 1894, p. 1079; Proceedings, 1897, p. 10; Constitution, 1909, sec. 74.

¹⁷ Forty-third Annual Report, 1908, p. 26.

strike benefits are paid, a strike may be practically ended by the withdrawal of strike benefits. Some national unions, such as, for example, the Amalgamated Glass Workers, the Boiler Makers, the Broom Makers, the Cap Makers, the Carpenters and Joiners, the International Seamen, the Iron Molders, the Ladies' Garment Workers, the Painters, the Teamsters, the Tile Layers, and the Wood Carvers, give their presidents and general executive boards discretionary power to declare a strike at an end so far as financial aid from the general union is concerned. Local unions may continue the struggle on their own financial responsibility, but such action virtually ends a strike. In the same way, in 1911, the general executive board of the Coopers discontinued paying benefits to a local union, believing that the general organization had done its duty to the local union.¹⁸ A number of unions also set a definite time limit for the payment of benefits, and as a rule this limit, unless extended, automatically ends a strike.

(4) A general vote of all local unions is required in a number of general unions before a strike can be terminated. A general vote of the division or railroad system to which the men belong is taken in the railroad brotherhoods like the Locomotive Engineers, the Locomotive Firemen, the Conductors, and the Trainmen on the acceptance of the terms of settlement. The Flint Glass Workers, the Lake Seamen, the Operative Potters, and some other unions require a vote of all members before a strike can be terminated. A strike continues indefinitely with the Flint Glass Workers until so ended, but benefits lapse at the end of a year unless continued by a general vote.¹⁹ A special convention may be called to consider the termination of a strike. The Commercial Telegraphers in 1907 called a special convention which appointed a "Peace Committee" to adjust the strike, but finally the question was submitted to a vote of all the local unions and carried.²⁰ A very

¹⁸ Coopers' International Journal, April, 1911, p. 239.

¹⁹ Proceedings, 1911, pp. 34, 181.

²⁰ Commercial Telegraphers' Journal, November, 1907, pp. 11, 40, 42.

common usage is that of the United Mine Workers in submitting terms of settlement to a general vote. The Ohio local unions embracing District No. 6 held a convention in 1895 and took up the question of agreement with the operators, and then submitted the same to a referendum vote of the miners of Ohio. The vote was 5091 in favor and 4351 against.²¹ In 1910 the demands of the operators were submitted to the members in Illinois by the executive board and refused by a vote of 45,190 to 1435, and the end of the strike came through the operators acceding to the demands of the United Mine Workers.²² In some unions, after a strike has lasted a definite period, as for twenty weeks with the Piano Workers,²³ a referendum vote is necessary to continue it longer. The decision of the national deputy in favor of terminating a strike, if not agreeable to the local union, is submitted to a general vote by the Box Makers, the Cigar Makers, the Plumbers, and the Tobacco Workers, and if so approved, becomes binding.

(5) The termination of a strike by a convention of the national union or of the district unions occurs frequently because sovereignty in the national union is usually found in the convention. Some unions, however, submit all rules or changes made to a referendum vote. The convention of the Iron Molders, for instance, in 1876 discontinued strikes in five places. After the president and other officers of the Chain Makers had had many conferences and a referendum vote for a settlement was lost, a convention in 1908 declared off a strike which had lasted for three years.²⁴ In 1904 on the occasion of a strike in West Virginia a special convention of the United Mine Workers of the New River District was called by the authority of the general officers. The whole situation was explained to the delegates at the convention, and by a large majority the convention declared the strike at an end.²⁵ Likewise

²¹ United Mine Workers' Journal, June 6, 1895, p. 1; June 13, 1895, p. 1.

²² Proceedings, 1911, p. 73.

²³ Constitution, 1906, art. vi, sec. 1.

²⁴ Proceedings, 1908, p. 80.

²⁵ Proceedings, 1904, p. 42.

in 1901 a proposition for strike settlement by several anthracite coal operators was considered at the Scranton Convention and accepted. A proclamation declaring the strike officially ended was issued after being signed by the national executive board and the presidents and secretaries of districts nos. 1, 7, and 9.

The local union or unions involved in a strike are bound to accept the terms of a settlement brought about by duly constituted authority. The Metal Polishers follow the general usage in declaring that "any local union accepting a settlement contrary to the decision of all local unions or the National Executive Board shall be expelled by the International Union upon presentation of sufficient evidence of guilt."²⁸ Not only may such action be penalized by revocation of charter, but individual members may be suspended if they refuse to obey the instructions of the general officers to return to work in such unions as the Blacksmiths, the Brush Makers, the Iron Molders, and the Printing Pressmen. The places of the strikers may even be filled and the strike thus terminated. Usually, however, such action is not necessary, as the simple withdrawal of strike benefits compels acceptance on the part of even recalcitrant local unions.

²⁸ Proceedings, 1911, p. 178.

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SERIES XXXIV

No. 4

**JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE**

Under the Direction of the

**Departments of History, Political Economy, and
Political Science**

**STATE ADMINISTRATION IN
MARYLAND**

BY

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PREFACE

This monograph is a study of administration in Maryland, and is in no sense a history. Only in certain cases, where it was deemed necessary, has the historical development of a function been traced. Nor is it a story of administrative politics in Maryland. It deals exclusively with the organization and the interrelations of the administrative departments of the Maryland government, and attempts a scientific analysis of their functions and forms.

It is perhaps unnecessary to point out that this study treats of state administration, and, except where the two fields are organically interwoven, excludes from consideration county and Baltimore City administration. Police administration has not been considered. In the counties it is insignificant, and, while the Baltimore City police commissioners are state officers, their work is largely a matter of local concern.

Frequent reference has been made to the "Code 1912." By this is meant the "Annotated Code of Maryland" by George P. Bagby, of the Baltimore Bar, which includes the laws of 1910, was printed in 1911, and is known under the date of 1912. In a few places reference is also made to a "Code 1904," which is a similar codification known as "Poe's Code." The regular annual reports of the various administrative departments have also been used. When other specific reference is not given, these reports, or a summary of them in the governor's reports, will be found in the biennial "Maryland House and Senate Documents."

It is regretted that this study does not include the provisions of the laws passed by the 1914 legislature. It was brought to a conclusion while the session was still in progress. When possible, pending legislative proposals have been discussed. The delay in the publication of the study,

which the author was unable to avoid, has possibly rendered inapplicable to present conditions certain discussions and observations.

In concluding this preface, appreciation is expressed of the wise guidance of Professor W. W. Willoughby. Acknowledgment is also made of the author's indebtedness to Dr. Horace E. Flack and Dr. Bernard C. Steiner for their kind advice, and to numerous state officials for their courtesy in giving information, especially to the Honorable Charles J. Bonaparte, Dr. John S. Fulton, Dr. Frederic V. Beidler, Mr. B. K. Purdum, and Mr. William H. Davenport.

J. L. D

STATE ADMINISTRATION IN MARYLAND

INTRODUCTION

This study does not attempt to describe the entire governmental structure of the State of Maryland. Its scope is limited to an account of that part of the executive branch which has to do with the actual performance of duties relating directly to the economic, intellectual, and moral welfare of the people. In very considerable measure, therefore, we shall have to deal with those functions which in general terms may be spoken of as the police powers of the State,—those powers which have been defined by the Supreme Court of the United States as authorizing executives “to prescribe regulations to promote the health, peace, morals, education, and good order of the people” and “to increase the industries of the state, develop its resources, and add to its wealth and prosperity.”

As an introduction to the performance of the task thus outlined, it will be necessary to refer to the powers of the governor. Generally speaking, the governor of Maryland is given control of administrative matters, and he appoints a great majority of administrative boards and chief officers, although no rule has been followed in this regard. There are a few rather important boards over which he has no control whatever; for instance, the licensing of physicians is put in the hands of boards chosen by the respective medical societies of the state. Aside from several boards of this kind, which for the most part deal with technical or scientific matters, he has almost complete appointive power. The extent of this appointive power varies. In some cases the appointment must be made “by and with the advice and

consent of the Senate;" usually this is the case when the office is a highly important one. It may be said that the power of removal accompanies the power to appoint; sometimes hearing must be given, in other cases not. Practically all of the administrative departments report to the governor, who transmits these reports to the legislature. Several of the most important boards to which the governor appoints members are the State Board of Education, the State Board of Health, the Lunacy Commission, and the Board of State Aid and Charities; he will probably also soon have the appointment of members of the Penal Board. It is interesting to note that the governor appoints, in addition, almost all the minor administrative boards and many state hospital and similar boards, of some of which he is himself a member. At every session of the General Assembly the governor must make a report to that body, reviewing the administrative work of the two previous years, and making recommendations.

There are a number of boards of which the governor is an ex officio member, often along with other state officers, such as the treasurer and the comptroller. For the most part, his influence and activity in the work of such boards are not great, although a very energetic governor might develop his power considerably through this means. There is one board, however, in the transactions of which the governor is a very important figure, namely, the Board of Public Works. This may be due to some extent to the small number of members on the board. In this case the governor is much more than a central, supervisory officer; he actually steps down into the field of state finance, and with the other two members of the board—the treasurer and the comptroller of the treasury—carries on the financial activities of government, approving bonds and depositories for state money, making bond issues after legislative authorization, and generally exercising decisive influence in forming the financial policy of the government and in putting it into practice. The Board of Public Works also has

several other functions, such as the supervision of the State Fishery Force.

Again, the governor has a number of important miscellaneous duties, such as the approving of bonds given by state officers, the signing of land patents, the quarantining of vessels, and so on. Finally, he has the veto power, which, although legislative in character, affects very materially administrative matters.

Thus it is seen that the governor of Maryland has considerable control over the entire field of administration. In spite of this fact, his leadership in administration has never seemed of much effect; whether this is due to lack of energy, to lack of correlation among the departments, or to some other cause, it is difficult to say. Probably if a more direct power, or rather duty, of supervision were added to his power of appointment and removal, his office would increase in administrative importance and influence.

CHAPTER I

PUBLIC EDUCATION

Public education in any section of Maryland other than Baltimore City is under the supervision of three different boards:¹ (1) the boards of district school trustees, with supervision of district matters; (2) the county school commissioners, with jurisdiction over the counties; (3) the State Board of Education, with general supervisory powers over the State.

ELEMENTARY EDUCATION

State Board of Education.—The governor by and with the advice and consent of the Senate, if it is in session, appoints six members of the State Board of Education,² for terms of six years. Two terms expire every two years. At least two of these members must be of the minority party, determined by the last gubernatorial election; the governor appoints to vacancies. These six, with the governor and the state superintendent of education, constitute the State Board of Education. Principals of normal schools and of normal departments of any school or college under the control of the board whose certificates are recognized by it are ex officio members of the board, but have no vote.

The office of the board is in Annapolis. The members receive no salary, but are reimbursed for actual expenses and may employ clerical assistance. The board is charged with carrying out the public education laws of the State and with enacting by-laws for the administration of the public

¹ G. P. Bagby, *Annotated Code of Maryland*, art. lxxvii, sec. 1 ff. Cited as Code 1912.

² *Ibid.*, sec. 5 ff.

school system, "which, when enacted and published, shall have the force of law;" they may remove or suspend for cause (that is, inefficiency or moral delinquency) any county superintendent; and they are given the power of "explaining the true intent and meaning" of the education laws and of "deciding, without expense to the parties concerned, all controversies and disputes" that arise under them, and "their decision shall be final."³ Thus they exercise, to an extent, all three governmental powers,—legislative, executive, and judicial. They act as assistants and advisors of the various county boards, and their advice is binding. They issue circular letters from time to time, to teachers and commissioners, on topics connected with the administration of public schools. When requested by a county board, they examine candidates for the office of county examiner and issue certificates. They are ex officio trustees of state normal schools. All schools and colleges and all normal school departments receiving state aid are required to report to the board in September; and these reports, or abstracts of them, are published in an annual report which is made to the governor, and which includes a statement of the apportionment of money to the counties and Baltimore City, together with suggestions for the improvement of schools and the "advancement of public education."⁴

State Superintendent of Education.—The governor, by and with the advice and consent of the Senate, appoints for a term of four years the state superintendent of education,⁵

³ This confers a comprehensive visitatorial power upon the state board which is summary and exclusive, and where such power is sufficiently comprehensive the courts will not interfere (*Wiley v. School Commissioners*, 51 Md. 405; *Shober v. Cochrane*, 53 Md. 549). While in matters involving the proper administration of the public school system the courts will not interfere with the jurisdiction of the state board, such is not the case if the determination of purely legal questions is involved. In the latter case remedy may be had by mandamus (*Duer v. Dashiell*, 91 Md. 669; *Underwood v. School Commissioners*, 103 Md. 189). The state board has power to advise the county board, and it is the duty of the latter to act accordingly. The legislature has a right to confer upon the state board the power mentioned in this section (*Underwood v. School Commissioners*, 103 Md. 188).

⁴ Code 1912, art. lxxvii, sec. 90 ff.

⁵ *Ibid.*, sec. 18.

and may remove him for cause, after submitting charges in writing to him and receiving the ratification of two thirds of the members of the state board. The salary of the superintendent is fixed by the board, at not over \$3000 per year and travelling expenses.

The duties of the state superintendent are to examine the county boards' statements of expenditures of school funds, and to submit his judgment on them; at his discretion to endorse normal school diplomas from other States, which, when endorsed by him, are legal certificates to teach in any elementary public schools in Maryland, until revoked; to arrange dates for teachers' institutes, to assist county superintendents in the preparation of programmes for county teachers' institutes, to attend these when possible, and to give instruction; to diffuse information as to the best methods of instruction; to inform himself and the state board as to the condition of schools throughout the State; in every way "to conserve the interests and promote the efficiency of the public schools of Maryland."

*County School Commissioners.*⁶—In six of the counties there are six county school commissioners,⁷ in the remainder, three, all of whom are appointed by the governor, by and with the advice and consent of the Senate, for various specified terms, and always with a provision for "minority party representation." The governor may remove for cause, after giving an opportunity for presenting and hearing charges, and he appoints to vacancies. The salary of each commissioner is \$100 a year. The county commissioners are to receive and hold in trust all gifts for educational purposes, and to execute these trusts; the state's attorneys are charged with seeing that they are carried out. The commissioners select sites for schools and may receive donations of or may purchase sites and buildings. They may, if necessary, acquire an acre or less by write of *ad quod*

⁶ Code 1912, art. lxxvii, sec. 6, sec. 22 ff.

⁷ Baltimore, Carroll, Frederick, Dorchester, Washington, Montgomery.

damnum; and they issue plans for building and furnishing school-houses.⁸

Text-books, which are free to pupils, are purchased by the county boards. Since 1908 the annual appropriation for the purchase of text-books has been \$150,000, distributed to the county boards pro rata to the number of pupils enrolled. The Baltimore City system is not under the supervision of the State in a direct way, as it merely reports on conditions to the state board and is otherwise independent, yet it receives its proportion of this text-book appropriation.⁹

County Superintendent.—The Board of County School Commissioners elects as county superintendent of education a non-member, who also acts as secretary and treasurer to the board. The county superintendent has general supervision and control of all schools in his county; he builds, repairs, and furnishes school-houses, and buys books; with the advice of the principal, he appoints assistant teachers. He may consolidate schools when he deems it expedient, and may provide for transportation to and from schools. In counties with more than eighty-five schools the board may appoint a clerk, and may fix his salary.

If the proportion of the state school tax and the free school fund for any county should prove inadequate, the commissioners of the county may designate a tax on assessable property in the county, to be collected under direction of the county commissioners, of not over fifteen cents on \$100, unless the county commissioners approve an additional tax. The school commissioners may make or revise boundaries of school districts. A majority may remove a member, and appeal lies to the state board. Each county board must report in September to the state board, and in November must publish a financial report and send a copy of it to the state board. By act of 1912¹⁰ the reports from the counties and from Baltimore City were made uniform.

⁸ Code 1912, art. lxxvii, sec. 37 ff.

⁹ *Ibid.*, sec. 68 ff.

¹⁰ Laws 1912, ch. 333.

An act passed in 1894¹¹ dealing with school sanitation provides that if the commissioners of a county or city do not fulfill their duties with regard to this matter, they may be removed by a court of competent jurisdiction on complaint of five citizens. This provision is, perhaps, not carried out, but the idea is good, considering the insanitary conditions that exist in many rural districts. Why Caroline, Kent, Dorchester, Somerset, Baltimore, Worcester, Howard, Prince George's, and Frederick Counties were excluded from the operation of the provision is unknown.

The county superintendent¹² examines certificates and certifies candidates for teaching. He gives temporary certificates which are graded "first" and "second" and are recorded. Permanent certificates (for a period of five years) are issued by him after the ability of the candidates has been tested in actual work for six months. For this purpose the "county examiner" holds regular teachers' examinations, giving notice in newspapers or otherwise.

The county superintendent, or his assistant, is required to visit schools a certain number of times, according to the number of teachers in the county; to observe and to make suggestions; when possible to attend public examinations; and to make a quarterly report to the county board. If the number of teachers in a county exceeds one hundred and seventy-five, the board may appoint an assistant superintendent, and grade supervisors may be appointed by the county boards in proportion to the number of teachers.

The county superintendent receives a salary fixed by the county board, and in his rôle as secretary-treasurer of the board his bond is also determined by it. He may debate at its meetings, but has no vote. In addition to his quarterly report to the county board, he prepares the annual county report to the state board, which he submits also to the county board.

District School Trustees.—Each district of each county

¹¹ Laws 1894, ch. 524.

¹² Code 1912, art. lxxvii, sec. 72 ff.

has a board of three school trustees,¹³ appointed by the county school commissioners. The principal teacher, whom they appoint from those holding certificates, subject to confirmation by the county board, is *ex officio* secretary of the board. The school trustees have the care of the school property; provide for repairs, the cost being determined by the county board; and generally supervise their schools. They visit them frequently, and, if possible, cause instruction to be given ten months of the year. They have the power of expulsion and suspension of pupils, subject to final appeal to the county board. The trustees are removable for cause by the county board, and when competent persons for the office of trustee cannot be found, the duties in a district devolve upon the county board.

Teachers.—Every teacher¹⁴ must hold a certificate issued by a county superintendent, or a certificate from the principal of a state normal school or from the principal of the normal department of Washington College, or a diploma from any such school, or any normal school diploma endorsed by the Maryland state superintendent of education, or a certificate from the Maryland State Board of Education. Diplomas from reputable college departments of pedagogy rank as “first grade” certificates for elementary or high school teaching, and exempt the holder from examinations. Every teacher must file with the county board a quarterly report, and is not entitled to pay until this is done. Certificates may be annulled by the county board on account of immoral conduct, subject to appeal to the state board. Persons with low grade certificates who have taught a certain length of time may be given life certificates exempting them from examination. The salaries of teachers are fixed by the county board, but a minimum is set at \$300 per school year, and a gradation is made of minimum salaries according to the certificate held and the time of service. The county superintendent submits annually to the county board a list of all teachers and a classification of their cer-

¹³ Code 1912, art. lxxvii, sec. 31 ff.

¹⁴ *Ibid.*, sec. 53 ff.

tificates, which is based on scholarship, executive ability, personality, and teaching power.

An act of 1902¹⁸ and subsequent acts of 1904,¹⁸ 1906,¹⁷ 1908,¹⁸ and 1912¹⁹ established a system of teachers' pensions, by which a person who has taught twenty-five years, has reached the age of sixty, and has no other means of support, may receive a pension of \$200 a year. The age limit may be waived by the board in extraordinary cases. For this pension the annual appropriation after 1908 was \$25,000, and in 1912 it was made \$28,000.

A teachers' institute is held in each county once a year, continuing for at least five days.²⁰ At times two or more counties combine for this purpose. District, county, and state teachers' associations must be held, and the county examiner is to aid them, encourage attendance, secure lecturers, and so on. These associations are permitted to use school-houses for their meetings. The State Teachers' Association has been in existence for some years, and has annual sessions during the summer, often at a summer resort. The work is often practical, sometimes including scientific demonstrations.

*School Attendance.*²¹—By acts of 1902,²² 1906,²³ and 1908²⁴ provision is made for compulsory school attendance of children between eight and twelve years of age, and for attendance of children between twelve and sixteen who are not "employed to labor." School attendance is enforced by "attendance officers." The police commissioners of Baltimore City are required at each census to prepare a list of all children between six and sixteen years of age, and to submit it to the city school commissioners. Factory pro-

¹⁸ Laws 1902, ch. 196.

¹⁶ Laws 1904, ch. 584.

¹⁷ Laws 1906, ch. 475½.

¹⁸ Laws 1908, ch. 605.

¹⁹ Laws 1912, ch. 135.

²⁰ Code 1912, art. lxxvii, sec. 92 ff.

²¹ Ibid., sec. 153 ff.

²² Laws 1902, ch. 269.

²³ Laws 1906, ch. 236.

²⁴ Laws 1908, ch. 241.

prietors in that city and in Allegany County are required to keep certificates on hand, open to inspection by attendance officers, for all children employed under sixteen years of age. Children between twelve and sixteen are not to be employed if they cannot read and write, unless they are regular attendants at some evening or other school, but such children are excused from schooling if a physician's certificate is obtained showing that attending school in addition to their daily labor will be "prejudicial to health."

In 1912²⁵ a new attendance law was passed, which slightly raised the age of compulsory attendance. The provisions of the compulsory attendance laws were poor enough, with their exceptions of children above fourteen who are "employed to labor;" but the law of 1912 was made farcical by a provision that it need be adopted only if the school commissioners for the county should approve it and should appoint attendance officers.

The attendance of every deaf or blind child in some school for the deaf or blind is made compulsory, unless the child is receiving instruction elsewhere or is unable to receive it. If the parents or guardians of such a child are not able to pay for transportation to and from the school, the State furnishes it.

Baltimore City.—The school organization of Baltimore City²⁶ is almost completely separate from the state organization. The mayor and the City Council are given full power to establish a system of free public schools,²⁷ including one or more schools for manual industrial training, under ordi-

²⁵ Laws 1912, ch. 173.

²⁶ Code 1912, art. lxxvii, sec. 121 ff.

²⁷ "The act of 1892, chapter 341, specifically prescribes the method by which county school commissioners ought to be appointed, but nowhere in this article is the method for the appointment of school commissioners in Baltimore City designated. This section gives to the city *the whole of the state's power over public schools in the city*, subject, of course, to the state's right of repeal" (Hooper v. New, 85 Md. 581; Baltimore v. Weatherby, 52 Md. 451). "This does not apply to such schools as St. Mary's Industrial School for Boys, the Maryland Institute for the Promotion of Mechanic Arts, etc., although the governor and mayor appoint directors or trustees" (St. Mary's Industrial School v. Brown, 45 Md. 383).

nances and rules which they enact. They may, by law, delegate supervisory powers and control to a board of school commissioners, and this is now done. As will be seen elsewhere in this chapter, however, reports are made to the state board, and state aid is received.

The Board of Commissioners of Public Schools of Baltimore has power to examine, appoint, and remove teachers, prescribe their qualifications, and fix their salaries, subject to the approval of the mayor and the City Council, and to select text-books. It must report annually to the State Board of Education on the condition of schools under its charge, and must include a statement of expenditures.

The mayor and the City Council are authorized to levy necessary taxes on assessable property to defray the public school expenses of the city. No limit is set by state law for this taxation.

Colored Schools.—The county school commissioners must, "if the colored population warrants," establish at least one free public school in each election district for colored youths between six and twenty years of age, and must determine the length of term.²⁸ The colored schools are put under the same laws and are required to furnish instruction in the same branches as the white schools, but each one is under the direction of a special board of trustees appointed by the county board. Colored schools are supported from the general school fund, and the total amount of school taxes paid by the colored people of any county or of Baltimore City, together with any donations that may be made for the purpose, is to be used for their support.

Criticism.—The general plan of control in Maryland's elementary education, with its centralization from the district trustees up through the county boards and the State Board of Education to the governor as an appointive center, is undoubtedly good. The control by the county boards of strictly county matters has been spoken of as the "most

²⁸ Code 1912, art. lxxvii, sec. 131 ff.

efficient and economical of all systems for rural schools in the United States."²⁹

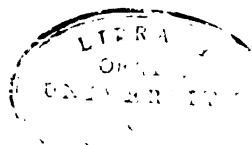
There are three needs in Maryland's administration of elementary education. First, we have seen how unsatisfactory are the present compulsory education laws. The provisions of these should be made state-wide and strictly binding. Secondly, there is inadequate supervision of the rural schools, due largely to an inadequate number of supervisory officers. This fact becomes striking when comparison is made between the Baltimore City and the rural schools. The condition has been pointed out in an educational survey of a Maryland county in which a member of the United States Bureau of Education cooperated.³⁰ The county superintendent should be given more assistants. Finally, there should be higher salaries and more uniform rules in regard to the training of the teachers throughout the State. With the present salaries good teachers are difficult to obtain. Most important, however, is the need of uniformity. Under the present system, by which qualifications are determined arbitrarily in each county by the county board, the teachers in one county may be college graduates and other well prepared persons, while in another county they may perhaps have only an eighth-grade education. Furthermore, appointment and dismissal of teachers are arbitrary, and politics enter into a matter that should be regulated entirely by merit. For the sake of efficiency and uniformity in elementary education, and also in justice to the teachers, a civil service system should be inaugurated.³¹

In concluding the review of elementary schooling in the State, it may be well to notice that in 1914 the Department of Education recommended an educational survey of all the counties. Such a detailed survey would undoubtedly throw

²⁹ Statement of a member of the Maryland Department of Education.

³⁰ H. N. Morse, E. F. Eastman, and A. C. Monahan, *An Educational Survey of a Suburban and Rural County* [Montgomery Co., Md.].

³¹ These needs have been pointed out by various persons, including the governor, officials of the United States Bureau of Education, and members of the Maryland Department of Education.



great light on the entire situation and furnish a more solid foundation for the working out of the problems involved.

SECONDARY EDUCATION

High Schools.—High schools³² are under the supervision of the county officers. County boards are authorized to establish high schools whenever it seems advisable, subject to the approval of the state board, or a joint high school and graded school may be established; all to be under control of the county board. High schools receiving state aid are arranged by the state board in two groups according to the number of pupils, number of teachers, and years of instruction given. In the first group four years, in the second group three years, of instruction are provided.³³

The state board prepares the courses of study for the high schools under its supervision, and makes by-laws for their government.

It is the duty of the state superintendent, personally or through some person whom he designates, to inspect annually all high schools receiving state aid, and also all such other schools as make application through their county superintendents to receive state aid. The state superintendent prepares a list of the high schools and the amount of aid to which each is entitled, based on information obtained through annual inspections and written reports of principals and county superintendents. This list is reported to the state board for approval, and is forwarded to the treasury department.

All promotions of pupils must have the approval of the principal and of the county superintendent. A diploma from any approved four-year-course high school admits, without examination, to the freshman class of any Maryland college receiving state aid.

³² Code 1912, art. lxxvii, sec. 125 ff.

³³ See report on the "Educational System in Maryland" by a special committee of the Board of State Aid and Charities, 1913.

Agricultural high schools are finding a place more and more in the educational system. One at Sparks, Maryland, is regarded as one of the best of its kind in the country. The last legislature⁸⁴ made two \$5000 appropriations, one for buildings for an agricultural high school at Federalsburg, and one for land for a similar institution at Ridgely, for which \$15,000 had already been provided, one half by the citizens and one half by the county.

The educational committee of the Board of State Aid and Charities said of these high schools: "The marked success of twelve Agricultural High Schools is such as to make highly advisable the further encouragement of this type of secondary education. The demand for agricultural courses all over the State is very great and your committee recommends some additional aid along this line."

Industrial Schools.—Industrial schools,⁸⁵ where domestic science and industrial arts are taught, are established by the county board in connection with the colored public schools. They are annually inspected and approved by the state superintendent; and there must be sent annually by the state board to the comptroller a list of such schools, which are entitled to receive a "special appropriation for industrial education." Fifteen hundred dollars is appropriated every year for each county with such a school, one half to go to the maintenance of the school and one half to the employment of a supervisor of colored schools, who, under the direction of the county superintendent, visits colored schools and "causes instruction of an industrial character to be made a daily part of the work of every colored school." But this \$1500 is not appropriated unless the average attendance for the preceding year has been thirty pupils, and unless there are ten colored schools in the county where the colored industrial school is located. If there are less than ten, one half of the amount, \$750, may be appropriated. The control of colored industrial schools and the employment of the supervisor are in the hands of the county board.

⁸⁴ Laws 1912, ch. 434.

⁸⁵ Code 1912, art. lxxvii, sec. 142 ff.

County boards may, if they think it advisable, make manual training, domestic science, and agriculture a part of the course of instruction in the colored schools of the respective counties, conforming to the course prescribed by the state board. The state superintendent supervises and inspects industrial and agricultural training in the counties.

State Normal Schools.—There are two white state normal schools³⁶ in Maryland, one in Baltimore City and one at Frostburg.³⁷ They are under the control of the State Board of Education, which appoints the principals and the necessary assistants. The state board prescribes for state normal schools and normal schools receiving state aid an academic or preparatory course and qualifications of age and scholastic attainment for the pupils. In all such schools there must be a two-year normal or professional course, in which the common school branches may be studied and in which special emphasis is given to professional subjects, including history of education, school organization, methods of teaching, and other pedagogical subjects. Students satisfying the entrance requirements as to age (boys must be seventeen years and girls sixteen years old) are admitted on scholarships from a city or county school board or on appointment from the state board. These scholarships are apportioned among the counties and Baltimore City according to the population. In addition to those holding scholarships, others may enter at the discretion of the state board, on paying twenty-five dollars per session, until the capacity is reached.

These normal schools are in every way under the supervision of the state board, and the board may organize experimental schools for practical work for the state normal school students. The annual appropriation at present (1914) for the Baltimore City Normal School is \$20,000 plus \$1000 for repairs, and for the Frostburg Normal School \$7000.

³⁶ Code 1912, art. lxxvii, sec. 82 ff.

³⁷ The normal department of Washington College will be treated in connection with that institution under the subhead "Higher Education."

In 1910 the legislature appointed a commission to investigate the establishment of a new Maryland state normal school, which the state superintendent strongly urged.³⁸ In 1912 there was provision for the selling of the property of the Maryland State Normal School of Baltimore, and for the purchase of new land and buildings, by a \$600,000 bond issue;³⁹ and \$25,000 was appropriated for improvements and additions to the Frostburg Normal School.⁴⁰

There is also a state normal and industrial school (No. 3) for colored teachers, which is under the control of the state board, the salaries of the principals and assistants of which are fixed by it, and the curriculum of which is prescribed by the same body. This school was established by act of 1908,⁴¹ was opened in September, 1911, at Jericho in Prince George's County, and receives \$5000 annually out of the appropriation for the system of free public schools. The students are taught agriculture, manual training, and other industrial subjects, in addition to the academic courses, and the Department of Education "feels that this may, in a measure, at least, solve some of the problems of negro education."⁴²

Other Schools.—Since 1898⁴³ the Charlotte Hall School has been authorized to grant a three-year state scholarship to a student from each of the legislative districts of the State, with competitive appointment by the county or city board of school commissioners. To St. Mary's Female Seminary, St. Mary's City, there is sent one "scholar" from each county and each of the four legislative districts of Baltimore, selected by the school commissioners.⁴⁴ These selections are non-competitive, and the scholar must be "worthy and charitable;" each scholarship is for three years. The same officers fill one scholarship from each

³⁸ Governor's Report 1912.

³⁹ Laws 1912, ch. 776.

⁴⁰ *Ibid.*, ch. 178.

⁴¹ Laws 1908, ch. 599.

⁴² Governor's Report 1912.

⁴³ Laws 1898, ch. 321.

⁴⁴ Code 1912, art. lxxvii, sec. 178.

county and each of the four Baltimore districts in the Maryland Institute (Schools of Art and Design) in Baltimore City.⁴⁵

From time to time the State makes numerous haphazard appropriations to private schools, all of which it would be impossible to trace here. By way of illustration it may be noticed that in 1911 the Maryland School for Boys and St. Mary's Industrial School each received \$12,500 for building purposes.⁴⁶ In 1913 altogether \$300,267.16 was received by special educational institutions (including colleges); by such schools other than colleges and exclusive of the school for the deaf and dumb at Frederick, a total of \$58,800 was received. This was in addition to the old academic fund.⁴⁷

Criticism.—One peculiar defect exists in the system of secondary education, one that is more directly connected with "school finance" than with any other topic and will be mentioned later in that connection. It is the existence in the State of a number of private academies which have received state aid for many decades, and which, in almost all cases, are duplicating the work of the public schools, either elementary or secondary.

On the other hand, the good condition of high schools is brought out in the following summary of secondary education in the State in the already mentioned report of the Board of State Aid and Charities: "The High School Act of 1910 is regarded by the Federal Department of Education, as one of the best on the statute books of any of our States. It has several marked advantages. The group system puts the state aid on an entirely impartial basis, and we feel that in time it will probably result in as good a High School System as there is in any State in the country."

The needs of secondary education in the State, then, may be summarized as follows: (1) elimination of unsystematic state aid to private academies; (2) greater aid to high

⁴⁵ Code 1912, art. lxxvii, sec. 182.

⁴⁶ Report of the State Board of Education for 1912.

⁴⁷ See Table J in Report of the State Board of Education for 1912.

schools and normal schools, especially the latter, and above all to colored industrial and normal education.

HIGHER EDUCATION

There are six colleges in Maryland which regularly receive state aid, namely, the Johns Hopkins University, the Maryland Agricultural College, St. John's College, Western Maryland College, Washington College, and Blue Ridge College. In addition to these six there are one or two other colleges which have received a certain amount of state aid, as, for example, the University of Maryland, and the old Baltimore Medical College, now consolidated with the University of Maryland. Of the six first mentioned, all give scholarships provided for by state appropriation, which are filled by the county or district school boards by means of competitive examination.

St. John's College at Annapolis is a military institution, with a commandant detailed from the United States Army; it gives mainly classical work, and had two hundred and forty-three free scholarships in 1912-13.⁴⁸ To it there is sent one state scholar from each senatorial district of the State, who, after taking a competitive examination, is appointed by the county or city school board "by and with the advice and consent of the local senator," and who is required to pledge himself to remain four years at the institution and to teach in the State for at least two years after graduation.⁴⁹ The college received \$15,000 in 1913 and a like amount in 1914.⁵⁰

Western Maryland College at Westminster is coeducational. It gives courses in classical branches, and also has a seminary to prepare students for the ministry of the Methodist Protestant Church. It is allowed two state scholars, one male and one female, from each senatorial

⁴⁸ Report of State Board of Education, Oct. 17, 1913, Table J.

⁴⁹ Code 1912, art. lxxvii, sec. 179.

⁵⁰ Seventh Biennial Report of the Board of State Aid and Charities, Table 3.

district, chosen in the same way as the state scholars to St. John's.⁵¹ Its appropriation is now \$3100 per year.⁵²

Similarly, one scholar is sent from each district to Blue Ridge College, at New Windsor, a small college with a classical curriculum, which only recently began to receive state aid. In 1912 the legislature appropriated \$5000 to it.⁵³ Its total number of free scholarships in 1912-13 was twenty-seven.⁵⁴

Washington College at Chestertown makes a fourth state-aided college doing classical work. It also has a normal department which was established by act of 1896,⁵⁵ when the "visitors and governors" were authorized to open a teachers' department, with a course in pedagogy of not less than three years. In this department is allowed one scholarship to an "indigent female," a graduate of a public school, from each county of the Eastern Shore, the scholar being pledged to take up teaching in Maryland after graduation. This appointment is made after competitive examination by the county board. One free state scholarship is also granted to the college for a male or female student from each county of the Western Shore, in either the normal or the collegiate department.⁵⁶ By act of 1912⁵⁷ Washington College received an appropriation of \$20,000 for the fiscal year 1913 and a like amount for 1914.

For several years St. John's College has been a part of the University of Maryland, in Baltimore, an institution with courses in law and medicine. The connection is little more than nominal, however, and the university is not a university in the proper use of the term, since no graduate work is given and no collegiate preparation is necessary to

⁵¹ Code 1912, art. lxxvii, secs. 180-181.

⁵² Seventh Biennial Report of the Board of State Aid and Charities, Table 3.

⁵³ Laws 1912, ch. 229.

⁵⁴ Report of State Board of Education, Oct. 17, 1913, Table J.

⁵⁵ Laws 1896, ch. 63.

⁵⁶ Code 1912, art. lxxvii, sec. 183 ff.

⁵⁷ Laws 1912, ch. 93.

enter the law and medicine courses. The Baltimore Medical College has only recently been consolidated with the University of Maryland. All of the above mentioned institutions occasionally receive special appropriations from the State for building purposes.

*The Maryland Agricultural College.*⁶⁸—This institution is unique among Maryland colleges. It is the only one over which the State exercises any direct control and therefore is the only one which is in any sense a state college. It is the only Maryland college that confines its work largely to the natural sciences. As an agricultural institution, many agricultural activities are correlated with it, such as the Agricultural Experiment Station, farmers' institutes, animal food and fertilizer inspection and analysis, and horticultural inspection. It also offers courses in civil, electrical, and mechanical engineering. The central position of the institution in the various agricultural activities of the State will be treated in detail in a later chapter.

The Johns Hopkins University.—The character of this institution scarcely needs description, with its international reputation as a graduate school in the arts and sciences and in medicine.

There has recently been established in connection with the university a department of engineering. The legislature of 1912⁶⁹ provided for a bond issue of \$600,000 and for an annual appropriation of \$50,000. One hundred and twenty-nine state scholarships are offered each year. Three of these go to each of the following institutions: Loyola College, Maryland Agricultural College, Mt. St. Mary's, Rock Hill, St. John's, Washington College, and Western Maryland College. The rest are apportioned among the senatorial districts in proportion to their respective representation in the House of Delegates. These scholarships entitle the holders to free tuition, including laboratory and other fees. One of them from each county or each district of Balti-

⁶⁸ Code 1912, art. lxxvii, sec. 177 ff.

⁶⁹ Laws 1912, ch. 90.

more is known as a "full senatorial scholarship" entitling its holder to board and lodging, or \$200 in lieu thereof. In this department the plan is to give undergraduate and graduate work, including professional and research degrees. An unfortunate provision of the act endowing the department is the requirement that scholars must be certified by their respective state senators. This makes the entrance of a political element possible. With this exception the organization is good.

Proposed State University.—It has recently been proposed that a state university be established in Maryland. This seems not only unnecessary, but impracticable. In the sphere of graduate work the Johns Hopkins University is all that could be needed. It is true that some of the colleges of Maryland are duplicating each other's work. But it is doubted if they could properly be consolidated, on account of their historic separation. What is needed is some central supervision of all colleges receiving state aid, which is, of course, quite different from central control.

According to the Board of State Aid and Charities, only one of the six Maryland colleges receiving state aid is graded by the Federal Bureau of Education as strictly a college. Promises have been made by this bureau soon to investigate Maryland colleges thoroughly and to grade them. This investigation will be looked forward to with interest, for some of the colleges have been raising their standards rapidly. It is undoubtedly true, however, that some of them do not take full college rank, and it seems very important that some central authority be given the standardizing of the colleges in the State, at least of those which receive state aid, and the control, through such standardization, of appropriations to colleges. Such a state authority could require the standards of a college to be sufficiently high before it might receive an appropriation. This could not be done immediately, but the standards of the colleges now receiving aid could be gradually improved.

DEAF, DUMB, AND BLIND⁶⁰

The Maryland Institute for the Deaf and Dumb, at Frederick, Maryland, was established by act of 1867 (ch. 247), with a president and board of thirty visitors appointed by the governor for life. Vacancies are filled by the governor. To this institution the governor sends scholars, upon certification of local authorities, for terms of not over seven years. Two hundred dollars per year is made the maximum expense for one student. The governor must dispose of applications in the order received. When the maximum sum has been expended, no more persons can be sent to the institution until a vacancy occurs. The Maryland School for the Blind at Overlea, Maryland, though a private institution, has become, as far as its finances are concerned, practically a state institution; in it are placed for instruction such indigent blind persons of seven years and upward, inhabitants of the State and of the city or county from which they are certified, as are recommended to the governor by the county commissioners of the counties or by the judges of the orphans' court of Baltimore City.

In connection with the Maryland School for the Blind there is a school for deaf, dumb, and blind colored children, also at Overlea, Maryland. While separate from the former institution, it is a department of it.

FARMERS' INSTITUTES

By act of 1896⁶¹ a department of farmers' institutes⁶² was established with the purpose of bringing to the farmers information to enable them to avoid some of the prevalent mistakes in agriculture. Farmers' institutes are held every year in every county, and there may be an additional one in each county. They are under the control of a "director,"

⁶⁰ Code 1912, art. xxx, sec. 1 ff.

⁶¹ Laws 1896, ch. 102.

⁶² Code 1912, art. lxxvii, sec. 148 ff.

appointed by the trustees of the Maryland Agricultural College, who "must be well versed in agriculture and of practical experience," and whose salary and duties are fixed by the trustees of the college. These institutes form a department of the Agricultural College, similar to the State Agricultural Experiment Station; \$6000 is appropriated annually for them, payable in October to the order of the college.

PUBLIC LIBRARIES

For the encouragement of libraries in connection with public schools, ten dollars per year is allowed to each district if the community raises a like amount; with this are bought books chosen by the district board and the teachers from a list furnished by the state board.⁶³

Maryland Public Library Commission.—There is a Maryland Public Library Commission whose jurisdiction extends to all but Baltimore County. The only apparent excuse for this exclusion is that this county is so near Baltimore City as not to need library facilities of its own. This commission is composed of four persons appointed every two years by the governor—two of whom must be women—together with the state librarian, the "superintendent of public instructors,"⁶⁴ and the librarian of the Enoch Pratt Free Library of Baltimore. It is an unpaid commission, but members receive travelling expenses for attending meetings. It elects its own president and secretary-treasurer, and reports annually to the governor. The duties of this commission are to advise persons in charge of public libraries and public school libraries in the selection of books, cataloguing, and so on, and to conduct a system of travelling libraries throughout the State. The appropriation for the work is \$1500 a year, from which free libraries may be established in counties, cities, and districts, but more than \$100 may not be spent for books for one library.

⁶³ Code 1912, art. lxxvii, sec. 99 ff.

⁶⁴ State superintendent of education.

The county commissioners of any county may establish a public library at the county seat, with branches throughout the county, and may levy a tax for its support of not over five cents on \$100. A municipality may levy seven cents on \$100 for a library, and a district may also do this if a majority of the voters so petition the county commissioners, in which case the library is conducted as a municipal one would be. In the establishment of these libraries the county or municipal authorities appoint nine directors for a term of six years (three every two years), who receive no compensation and may be removed for cause. They elect a president, a vice-president, a secretary, and a treasurer; make by-laws for the regulation of the library; approve the bond of the treasurer; have control of the expenditures and of the construction of buildings; have supervision of all property; may obtain new buildings and grounds; and appoint a librarian and assistants, whom they may remove and whose compensation they determine. Each such library board must report annually to the county commissioners or to the municipal legislative authority, as the case may be, and must include with the report a financial statement; a copy of this report is forwarded to the Public Library Commission.

*State Library.*⁶⁵—For many years there has been a state library at Annapolis. The librarian, who is appointed by the governor, binds all the laws, journals, and documents of the General Assembly, and distributes them to certain officers of this and other States and to public libraries in Maryland. A library committee of three or more persons is appointed without compensation by the court of appeals, to establish rules and regulations for the management of the library, and to purchase books, maps, and periodicals for the library, for which the sum of \$500 is annually allowed.

In its report for 1914 the State Board of Education recommended that the Public Library Commission be transferred to the office of the state librarian in Annapolis, since

⁶⁵ Code 1912, art. lv.

the work of the two offices is closely allied, and since such a transfer would make possible the use of the same clerical force for both, and thereby save administration expenses.

EDUCATIONAL FINANCE⁶⁶

All property conveyed in any way to any particular county or school district for public education is to be held in trust by the county board; and is, together with all money invested in trust for the benefit of the public schools, exempt from all state, county, or local taxes.⁶⁷

The state tax for education, which is levied on taxable property throughout the State annually, is received by the treasurer and apportioned by the comptroller among the counties and Baltimore City in proportion to the population between five and twenty years of age;⁶⁸ a certain amount is deducted if the schools in a county are kept open for less than nine months or if any white teacher, regularly employed, receives less than \$300 a year.⁶⁹ From this fund are also taken annual appropriations for⁷⁰ the state normal schools, the colored normal school, the salary of the state superintendent, the salary of the clerk to the state superintendent, and the expenses of the state board. The sources of revenue for public education are the state school tax, the county school tax, and various special funds. In 1901 there was received and expended on public education \$727,314.41, and in 1911 (ten years later) \$1,493,760.60.⁷¹ In 1913 the state levy was 16½ cents on each \$100, which yielded \$1,625,208.88, the county levy amounted to \$2,846,176.18, and the total received from all sources was \$4,494,195.76.⁷²

Although school revenues have greatly increased within the last few years, it may be said that more money is needed,

⁶⁶ See reports of the board for recent statistical details.

⁶⁷ Code 1912, art. lxxvii, secs. 175, 176.

⁶⁸ Ibid., art. lxxvii, sec. 135 ff.

⁶⁹ For Garrett County, 7½ months and \$200.

⁷⁰ Code 1912, art. lxxvii, sec. 139.

⁷¹ Governor's Report 1912.

⁷² Report of State Board of Education for 1913, Table C.

especially for better salaries for teachers. Certain needs and principles in Maryland school finance may be enumerated briefly.⁷³ A great deal of the money for the support of the school system is obtained from the above mentioned school tax. It has been suggested that this be raised to twenty cents. "A comparative study of Public School Systems in the forty-eight States by the Russell Sage Foundation, gives Maryland a rank of forty-six in the ratio of amount spent for school purposes to wealth, the same being but twenty-one cents for each one hundred dollars of wealth. The same report ranks Maryland thirty-eighth in the amount of thirteen cents per day per child."⁷⁴

In addition to support by taxation, there are, as we have seen, a number of funds in the treasury set aside for special educational purposes. The difficulties here are that some parts of the system receive support from the general fund which should receive special appropriation, if any, and that on the other hand some of these special funds support institutions not worthy of support. Most notable of these is the "academic fund," an historic fund which gives aid to private secondary institutions which have outgrown their usefulness. These old private academies should be transformed into high schools with uniformly high standards or should go out of existence.

As for the distribution of school funds throughout the counties, the present system, based on the proportionate county population between five and twenty years of age, is fairly good. It is certainly better than the very inequitable plan followed in some other States, which is based on the proportion of assessed wealth. It enables the richer portions of the State to help the poorer. The ideal plan for such distribution, however, as laid down by a special committee of the Board of State Aid and Charities, is one based

⁷³ Most of these recommendations are fully discussed in a report on the Maryland educational system, made by a special committee of the Board of State Aid and Charities in 1913, and many of them are also mentioned in the last report of the Department of Education.

⁷⁴ See above report of the committee of the Board of State Aid and Charities.

on a combination of two principles, namely, the proportion of aggregate days of attendance, and the proportionate number of teachers actually employed.

Concerning the support of colleges by the State, two changes of policy have been suggested. It is recommended, first, that support be withdrawn from colleges that do not measure up to a required standard, and possibly from those that duplicate each others' work, and second, that colleges be refused support to carry on preparatory work that is already being done by recognized secondary institutions. These methods would be very potent in bringing Maryland colleges up to high standards, and they are strongly urged by the Board of State Aid and Charities. While inherently sound, they are, as recommended, probably too drastic. The transformation of higher educational institutions cannot be instantaneous. They should be required gradually to improve.

The following general principles, based mainly on recommendations from the federal commissioner of education, are laid down by the special educational committee of the Board of State Aid and Charities already mentioned: (1) Expenses of administration should be taken out of the school tax, and other expenses should be provided out of the general treasury. The cost of maintenance of the state normal schools and the appropriations to secondary schools and institutions of higher learning should be provided for from the general treasury. (2) Appropriation should be made only to institutions over which the State through its regular educational officers, or through boards of its own appointment, can exercise a direct control. (3) A common basis should be established for all institutions of one kind, and for all political units of one kind, for example, counties. (4) Duplication of appropriations by special act, and continuing appropriations for scholarships, and so on, should be eliminated.

SUMMARY

The needs of public educational administration in Maryland may be recapitulated as follows: (1) Elementary education: (a) a certain amount of consolidation; (b) greater supervision, especially in the rural districts; (c) a systematic civil service for teachers, which will insure much higher salaries, salaries according to efficiency, and appointment and tenure according to merit; (d) to secure all this needed standardization, a vesting of authority to make it effective in the state board; and a corresponding divesting of local boards of loose discretionary powers. This is owed to the State, to the pupil, and perhaps above all to the teacher; (e) a comprehensive, compulsory attendance law, with proper machinery and power for its enforcement; (f) an educational survey of all the counties.

(2) In general, secondary education in the State is well organized. The needs are: (a) abolishment of state aid to the old private academies which duplicate the work of state schools; (b) more concentration in industrial and especially in normal school work in order to prepare the trained teachers that are so greatly needed, particularly in the education of the colored race.

(3) Higher education: the establishment of a central authority with power to supervise though not control all colleges receiving state aid, so that such colleges may receive aid in proper proportion, and may be made to bring their standards up to full collegiate requirement. This central authority might be the State Board of Education or a separate board, preferably the former. Great care should be taken that it be kept free from political influence; it should be composed of highly educated and independent men. This plan should take the place of the inadvisable one of establishing a state university.

(4) Finance: (a) an imposing of sufficient tax rates; (b) an abolition of the special and useless appropriations

which we have already noted in secondary education; (c) an equitable distribution of state money among political units and institutions which may be supervised by state educational officers, and which measure up to set standards. This need is manifest mainly in secondary and higher education.

CHAPTER II

PUBLIC HEALTH

The governmental organ whose functions are most directly concerned with public health in the State is the State Board of Health. There are, however, a number of other branches in which public health is the ultimate object, which will be first considered.

LICENSING BOARDS

There are certain licensing boards for various professions and trades in the State. All of these boards, except those of medicine and surgery, have members appointed by the governor. These boards examine applicants for the specified professions, according to methods laid down by state laws ; charge certain small fees ; issue licenses ; and have the power of revoking licenses for certain causes, after a public hearing has been given.

The development of licensing boards for various professions is interesting. The right of the State to such control is one exercised only in modern times. The first laws in Maryland affecting the control of the practice of medicine and surgery appeared shortly after 1880. In this branch, also, it may be noted that the profession is given direct control over its own members. Two boards, one of allopathy and one of homeopathy, are chosen by the Maryland State Medical and Chirurgical Faculty and the State Homeopathic Society respectively. Each board examines applicants of its own school of practice.

The other boards are chosen by the governor, but usually from lists furnished by the profession. The establishment of control over dentistry dates from the same period as that

over medicine. Strangely enough, the veterinary board next came into existence, in 1894. Pharmacy followed in 1902, and in 1904 the board of examiners for nurses was provided.

VACCINATION¹

There is a state vaccine agency in Baltimore City which has existed for many years.² The governor, with the advice and consent of the Senate, appoints a state vaccine agent (a physician) for six years, who furnishes physicians in the State with good virus gratuitously, keeps a record of such dispensing, and advertises the subject in the newspapers at certain intervals. He reports annually to the governor.

When a child is vaccinated and its parents or guardians are too poor to pay, the county commissioners, or the mayor and the City Council, may be required to bear the expense, but the county or city authorities may make a contract with a physician to vaccinate all who apply. It is the duty of every physician to vaccinate all children presented to him for vaccination within a year after birth, and all persons who apply to him who are not already effectually vaccinated. Vaccination is, by law, compulsory in the public schools.

STATE DEPARTMENT OF HEALTH³

We now turn to that branch of Maryland administration which deals most directly with the health of the public, largely through sanitation.

The State Board of Health of Maryland, the sixth oldest state board in the Union, was created by legislative enactment in January, 1874, and organized May 6th of the same year. . . . It early devoted its attention to the investigation of the causes of diseases and their suppression, and to the registration of births and deaths. The urgent need of a chemist soon became manifest, and provision was made for the employment of such an official as early as 1887. Ten years later the equipment of a bacteriological laboratory was recommended, and the work was begun in June of the following year.

¹ Code 1912, art. xliii, sec. 53 ff.

² Laws 1864, ch. 269, sec. 1 ff.

³ Code 1912, art. xliii, sec. 1 ff.

In 1910 the work of the Board was organized into bureaus, systematizing its performance and enlarging its sphere of usefulness.⁴

The official title of this body is the State Department of Health. It is composed of seven members, including one experienced engineer and three experienced physicians, appointed, two every two years, by the governor with the consent of the Senate; there is also a secretary. The attorney-general of the State and the commissioner of health of Baltimore City are *ex officio* members.

Control by the board extends over the counties, and it cooperates with the Public Health Department of Baltimore City. In general, the work of the State Department of Health, as set forth by the law, is as follows:⁵ "The State Board of Health shall have general care of the sanitary interests of the people of this State; they shall make sanitary investigations and inquiries respecting the causes of disease and especially epidemics, the causes of mortality and the influence of locality, employments, habits, and other circumstances and conditions upon the health of the people; they shall inquire into . . . all nuisances affecting the public health," and they are authorized to apply to circuit court judges for injunctions to restrain nuisances.

The board is also authorized to organize throughout the State local boards or advisory committees which are to report quarterly to it on sanitary conditions in the State. The board may send a committee or its secretary to investigate any unusual sickness or mortality, and in case of an epidemic the board is to have all necessary sanitary measures taken. In such cases of epidemic it may, with the approval of the governor, obtain from the comptroller not over \$10,000 from any unappropriated money in the treasury for the carrying out of these sanitary measures.

The Secretary.—The board elects a secretary, who is the chief executive officer and who has direct charge of public health administration in the State. He must be an "edu-

⁴ C. W. G. Rohrer, "The State Board of Health of Maryland" (printed as a pamphlet).

⁵ Code 1912, art. xliii, sec. 3 ff.

cated physician" and experienced in sanitation; he may be chosen by the board from its own number, in which case the governor is to appoint another member to take his place on the board.

The secretary's duties are to keep a record of all transactions of the board and an account of its expenditures; to correspond with boards of health in other States and with local boards and health offices in Maryland, to secure an interchange of information in regard to sanitation, and to keep such correspondence on file; to prepare blank forms and send them to local boards for reports; at the request of local boards to visit local districts; from time to time and when directed by the governor or legislature, to make special inspection of hospitals, asylums, prisons, etc.; at every session of the legislature to submit to it through the board a report on his investigations, with recommendations; when requested by the governor or other proper authorities, to advise as to the location, drainage, water supply, excrement disposal, heating, and ventilation of any public institution or building in the State; to collect vital statistics and statistics of disease and hygiene in the State, and through an annual report, or otherwise as the board may direct, to disseminate information among the people.

The board may call public conferences of health officers, or may send delegates to any local, state, or national conference of health officers. It may, in case of danger of epidemic, take any action it sees fit, adopting regulations the violation of which constitutes a misdemeanor.

Before 1910 the secretary acted also as registrar of vital statistics. These statistics he was to tabulate and send annually to the governor, the state librarian, the members of the General Assembly, other state boards of health, local registrars of vital statistics, and elsewhere at his discretion. The local health officers were local registrars of vital statistics (except where these were already provided for by charter or ordinance), and they might, with the consent of the State Board of Health, appoint subregistrars to collect

all facts connected with births (parents of baby, nationality, attending physician, etc.) and deaths (cause, physician, etc.); and these facts were to be forwarded once a month or oftener. Since 1910 this work has been supervised by a bureau.

In 1910 the work of the State Department of Health was organized into bureaus, five in number, as follows: Communicable Diseases, Bacteriology, Chemistry, Sanitary Engineering, and Vital Statistics. The secretary appoints with the consent of the board "men of technical ability" as chiefs of these bureaus, at \$1500 to \$2400 (at the discretion of the board), and assistant chiefs at \$1000 to \$1800. These men are removable by him with the consent of a majority of the board.

Bureau of Vital Statistics.—The secretary of the board is known as "state registrar of vital statistics." As we have seen, the Bureau of Vital Statistics is headed by a chief of technical training. Until recently the registrars of statistics throughout the State were insufficiently controlled by the State Department of Health. In 1912⁶ this condition was greatly improved by further legislation. The system as it now stands is as follows: County health officers are *ex officio* county registrars of vital statistics, and health officers of towns and cities are *ex officio* local registrars, except in cases of incorporated cities or towns where, by charter or ordinance, the method of appointment of a local registrar of vital statistics is specifically designated.

Each election district, city, and incorporated town constitutes a registration district, although the state registrar may combine two or more districts in any county into one registration district if the total population of the resulting district does not exceed 100,000. Each county registrar, with the advice and consent of the local board of health, appoints a local registrar in each district, who holds office during the term of office of the registrar who appoints him, receives death certificates and issues burial permits upon

⁶ Laws 1912, ch. 696.

them, receives birth certificates, and performs such other services as the local board of health directs. He may also receive special orders from the state registrar; for instance, the regular period for making returns is monthly, but "in the event of unusual sickness or mortality or for the purpose of legal, legislative, or other inquiry, the State Registrar may require from any local registrar returns at shorter intervals." In a number of instances the county registrar also acts as local registrar of the district in which he resides.⁷

The state registrar authorizes the local registrars to appoint as many deputy local registrars as he deems necessary. Registrars throughout the State receive certain fees, ranging from twenty-five cents downward for each registration of a birth or death. If any county, local, or deputy local registrar refuses or neglects to execute his duties, the state registrar may, with the advice and consent of the State Board of Health, require him to vacate his office and may make a new appointment to fill the vacancy. This has been done in a number of instances. Subordinate registrars make reports to the state registrar, and also to their immediate superiors, who, in turn, report to the State Department of Health, that is, to the Bureau of Vital Statistics. This provides a system of checks by which information can be verified. Notice of births and deaths must be given by physicians or mid-wives in attendance, householders and parents and nearest kin, those in charge of ships and houses of charity or correction, and coroners. These vital statistics are collected by the Bureau of Vital Statistics of the State Department of Health, and are tabulated and published.

*Bureau of Communicable Diseases.*⁸—The purposes of this bureau are to secure "accurate and complete" returns of communicable diseases in Maryland; to examine into the prevalence and causes of such diseases and to devise means for their control; and to examine into and investigate epidemics and nuisances and to devise means for their sup-

⁷ From statement by member of the State Department of Health.

⁸ Laws 1910, ch. 560, sec. 21B.

pression. The principal work of the bureau may be said to be cooperating with the local health officers in controlling the small outbreaks of disease which so commonly occur. The bureau sends to the locality in which such an outbreak occurs deputies or health department inspectors, who advise and aid the local officers in sanitation and disinfection. The locality pays the cost of the measures taken, as, for instance, the materials for disinfection.

Bureau of Bacteriology.—This bureau⁹ is directed to inquire into the nature, source, and vehicles of infectious diseases; to establish a laboratory; and to examine into and analyze public and private water supplies, milk, and foods. Its services are free to all local boards of health, to practising physicians in the State, and to the state vaccine agent (for testing vaccine virus). Its work, like that of the Chemical Bureau, is not administrative in character, but ancillary to the other branches of public health work.

The bacteriological laboratory is maintained jointly with Baltimore City. The bacteriologist of the State Board of Health is also the city bacteriologist. The cost of maintaining the laboratory under this arrangement is less than \$3000 a year.¹⁰

*Bureau of Chemistry.*¹¹—The functions of this subdivision are defined as follows: to establish a chemical laboratory; to inquire into the "nature, source, and vehicles of infectious disease;" to inquire into the "nature of sewage, tradewastes, and nuisances;" and to analyze, free of cost, public and private water supplies, milk and foods, drinks, confectionery, drugs, spices, condiments, and so on.

Bureau of Sanitary Engineering.—The work here includes examination of water supplies and sources, public and private; patrol of watersheds and catchment basins of public water systems; examination of public and private systems of sewage and tradewastes disposal, of offensive trades and nuisances, and of ventilation, heating, and lighting of jails,

⁹ Laws 1910, ch. 560, sec. 21C.

¹⁰ Report of State Board of Health, 1910.

¹¹ Laws 1910, ch. 560, sec. 21D.

asylums, and other public institutions; and the making of sanitary surveys of cities and towns.

This bureau was provided for in 1910,¹³ but on account of an insufficiency of funds was not established until 1912. It is headed by an engineer. Thus engineering is brought to the aid of medicine, a rather new and rare occurrence in state health departments. The work of this bureau is just getting under way, and it suffers from the same lack of power of enforcement and control of local officers that has existed to a greater or less extent in other branches of the state health work. For instance, many things are done, either privately or by local governments, in connection with water and sewerage systems, with total disregard of the health department. But that the courts are coming to its support is shown in the recent Jones Falls Valley Sewerage Plant case.

LOCAL BOARDS AND GENERAL HEALTH PROVISIONS

The local boards of health¹³ are chosen locally. Each board of county commissioners is the board of health for the county. It is required to appoint (with power of removal) a good physician to be county health officer and secretary and executive officer.¹⁴ Of course, any town which chooses to do so may establish a subsidiary health department. The county boards have powers in the locality similar to the general state powers of the state board. The law provides that local health officers shall receive compensation based upon proportionate population, but their fees and charges are regulated by the local board; and poor compensation is one of the factors in local inefficiency in public health work.

The local board takes cognizance of all unhealthy conditions, such as pig-pens and drains, within its jurisdiction,

¹³ Laws 1910, ch. 560, sec. 21E.

¹³ Code 1912, art. xliii, sec. 33 ff.

¹⁴ It has already been mentioned that Baltimore City has a separate and independent health department.

and receives complaints from qualified medical practitioners, or two or more persons affected, of public nuisances or insanitary conditions. For some incomprehensible reason Baltimore County is excluded from this provision.¹⁵

The local secretary makes an annual report to the state secretary of all proceedings of the local board and of such information as may be valuable for the biennial report of the state board. The looseness with which this duty is performed illustrates one of the weakest points in the Maryland system.

INFECTIOUS DISEASES

The control of infectious diseases¹⁶ is part of the work of the health officers of the State, the central and local boards cooperating in it. On certification of a medical practitioner of cases of infectious disease, the local health authorities or justice of the peace may order a house and its contents cleansed and disinfected. If the owners or occupants fail to do this, they are liable to fine, and the officer may have the house disinfected and recover the expense from its occupants, unless they are paupers, in which case the city, town, or county pays. A health officer or justice of the peace may order disinfected or destroyed any bedding, clothing, or other articles which have been exposed to infection. Any person with a dangerous infectious disease who has no proper place to stay may be sent to a hospital by order of a health officer or justice of the peace at the expense of the town or county. A person with an infectious disease must not go about, and articles liable to have been infected must not be exposed publicly without proper preliminary disinfection; children infected with dangerous diseases must not knowingly be permitted to enter other homes, theatres, churches, and so on. Owners of public conveyances are required to disinfect them, in a

¹⁵ Code 1912, art. xliii, sec. 37.

¹⁶ *Ibid.*, sec. 41 ff.

manner approved by a health officer, after an infected person or body has been in them; they are allowed to charge sufficient for the transportation to cover the cost of such disinfection. Houses and rooms in which an infected person has been living must not be offered for rent without proper disinfection under the approval and certificate of a qualified medical practitioner; nor, in showing for let such houses or rooms, may the infection be denied, upon questioning, unless the infected person had moved out at least six weeks before.

A health officer or a justice of the peace may order a body buried if it is being kept so as to endanger the public health; if relatives or friends fail to bury, the city, town, or county is to do so at its own expense. Permits must be obtained from local health officers for all interments and disinterments, regardless of infection.¹⁷

Municipal and county authorities may provide hospitals or temporary places of reception for the sick, or the authorities of two or more counties or communities may combine and provide a common hospital. Patients in such institutions are liable for charges within twelve months after their discharge, unless they are paupers. On account of the liability to infection of beds and mattresses stuffed with cast-off clothing, and the like, all such furnishings are required to be labelled, telling what is contained in them.

The local board of health must be notified of all cases of dangerous, contagious diseases by the householders and by the physicians who know of such cases. The board is to keep a detailed record of all such cases, and to give notice of them to the local school board. It must also notify the State Department of Health, within twenty-four hours.¹⁸

Every death from dangerous, infectious disease must be reported by the physician or householder, with all details of age, sex, disease, and so on. Hotel and boarding-house keepers and managers of institutions must report all cases of

¹⁷ Code 1912, art. xliii, sec. 12.

¹⁸ *Ibid.*, sec. 63 ff.

infectious diseases on their premises to the local health officer or the state secretary, who is to take necessary measures. In the absence of a local board, the state board makes regulations concerning nuisances and sources of contagion. The state board may make any necessary regulations respecting articles capable of conveying infection; in such cases, as in cases of similar action by a local board, persons sustaining damages thereby may receive compensation from the state, county, or municipal authorities, as the case may be.

In general it may be stated that in the absence of a local board, the state board acts, and may direct the state's attorney to prosecute offenders.¹⁹ A law of 1912 prohibits the use of common public drinking cups in the State.²⁰ In the same year it was provided that physicians must report to the health department "employment" diseases and illnesses, with the name of the patient, the place of employment, and so on.²¹ But no express provision is made for the investigation of such cases by the health department.

Tuberculosis.—The control of this disease²² is especially placed in the hands of the public health authorities, state and local. The state board keeps a register of all persons with tuberculosis in the State. Every person in charge of any state institution, such as a school, hospital, or jail, must report within forty-eight hours every case of tuberculosis discovered, with all details of the case. All physicians also are required to report all cases of tuberculosis coming to their knowledge. Any dwelling after occupation by a tubercular patient must be disinfected by the local board; and any person knowing of the vacating of such a dwelling is required to give notice to the board; apartments must not be relet until after such disinfection. Tubercular patients are prohibited from spitting in houses occupied by others, and complaints of this may be made to a health officer.

¹⁹ Code 1912, art. xliii, sec. 97 ff.

²⁰ Laws 1912, ch. 156.

²¹ Ibid., ch. 165.

²² Code 1912, art. xliii, sec. 84 ff.

The attending physician in a case of tuberculosis is to take measures for the safety of persons occupying the same house. If he fails to do so, the duty devolves upon the local board of health, which in all events cooperates with him and gives orders to him. The physician is furnished with directions concerning precautions to be taken in tuberculosis, and directions also to be given to the patient; he is also furnished with a list of prophylactic supplies to be had free of cost from the local board and his requisition for these is honored by the local board. If the physician carries out the orders properly, he receives a fee of one dollar and a half a case. For such measures an annual sum of \$5000 was appropriated until 1912, when this was made \$10,000,²³ to be drawn upon by the state board for the use of the local boards. The state board supplies the local boards with the literature and the medical supplies mentioned above.

MIDWIFERY²⁴

By law of 1898²⁵ "every midwife, obstetrical nurse, or other person, not a legally qualified physician, attending for pay or hire, upon a lying-in woman, or woman in childbed," was merely required to "send his or her name and address to be registered in the office of the registrar of vital statistics for the city, town, or county" in which he or she resided; and in case the patient had fever, the midwife was to notify the local health officer and refrain from attendance upon any other woman until granted permission by the health officer to resume practice.

In 1910 a law was passed²⁶ more strictly regulating the practice of midwifery, and this regulation, unlike that of other professions concerned with the public health (such as medicine, with its special licensing board), is placed in the hands of the public health department. Examinations for the profession are now required.

²³ Laws 1912, ch. 512.

²⁴ Code 1912, art. xliii, sec. 68 ff.

²⁵ Ch. 436, sec. 34F.

²⁶ Laws 1910, ch. 722, sec. 55A ff.

PURE FOOD AND DRUGS

In 1890,²⁷ 1902,²⁸ and 1904²⁹ pure food and drugs laws were enacted. In 1910³⁰ they were greatly added to and improved by provisions modelled to a large extent on the United States pure food and drugs laws. These final provisions went into full force January 1, 1911. Their enforcement constitutes another branch of the work of the State Health Department. Their substance is as follows: The sale of any corrupted, adulterated, or unwholesome food or drink is prohibited. The State Board of Health is authorized to investigate such articles, make chemical analyses, forbid their sale, or cause them to be destroyed; its inspectors are authorized to inspect food at all times. It is the duty of the state prosecuting attorney to attend to the prosecution of all complaints concerning unwholesome food and drink. Twenty-five thousand dollars is annually appropriated for the inspection and analysis of such articles by the State Board of Health. There are special provisions regarding beer, meat, vinegar, and so on, and for the execution of some of these provisions additional sums are appropriated.

State Food and Drugs Commissioner.—This official was provided for in 1910, to be appointed by the State Board of Health, and to receive \$2500 per annum. For the salary of the commissioner and the expenses of his office and payment of his employees, \$15,000 is annually appropriated, to be paid on the authorization of the State Board of Health. The duty of the commissioner is to administer the food and drugs laws under the direction of the board. As far as is practicable the rules and regulations adopted by the health board for the carrying out of the food and drugs laws are to be the same as the rules and regulations adopted by the federal government for the execution of the United

²⁷ Laws 1890, ch. 604, sec. 52 ff.

²⁸ Laws 1902, ch. 606, secs. 81A, 55A.

²⁹ Laws 1904, ch. 378, sec. 81B; ch. 653, sec. 51A ff.

³⁰ Laws 1910, ch. 156, secs. 140-A to 140-O inclusive.

States Food and Drugs Act of January 30, 1906. The board is to send copies of these state laws to manufacturers, wholesalers, and retailers of Maryland.

Adulteration, imitation, misbranding, and wrong or insufficient labelling of drugs and food, including water, drinks, confectionery, and condiments, are prohibited. The drugs standards are based on the United States Pharmacopoeia. In case an article has not been so standardized, the standards adopted by the United States Department of Agriculture are used. The quantity of certain dangerous drugs, like opium, contained in an article must be printed on the label. A special Maryland standard is set for ice cream. No dealer, however, may be prosecuted if he can show a guaranty of the goods issued by a Maryland wholesaler from whom he obtained the goods. When, after examination and analysis of an article in the laboratories of the State Board of Health, under the supervision of the food and drugs commissioner, it is found to be adulterated or misbranded, notification and hearing is given, and then, if it is necessary, prosecution is begun by the state's attorney.

The operations of this department began in September, 1910. By the end of 1911, 4136 villages, towns, and cities had been visited; inspectors had covered 9411 factories, canneries, and stores; 140 lots of food and 50 lots of drugs had been condemned and destroyed because unfit for use; and 2300 samples of food and drugs had been purchased and sent to the laboratories for analysis and reports of the analyses had been made.⁸¹ This shows the activity of a branch of the public health work on the importance and value of which no comment is needed.

CRITICISM

The Maryland State Board of Health is excellently organized and is doing good work. Its president is one of the best known medical scientists in the country. It ex-

⁸¹ Report 1912.

hibits, however, a deficiency similar to that which is found in other branches of the State's administration, that is, local inefficiency, disintegration, and lack of central power. This is evidenced in the performance of their duties by the local boards of health and the local secretaries. In the report of January 10, 1912, the state secretary says: "There is . . . I am glad to note, a growing tendency to reappoint efficient and capable men, irrespective of personal or political considerations, and I believe there is a strong sentiment, not only among the medical profession who should be leaders in a movement of this kind, but among the general public, to remove the office from the influence of political consideration, so far as it is now possible to do so." However, in the same report he says:

During 1909 there were twenty-three county health officers in Maryland, and also health officers in eighteen incorporated towns. All local health officers are secretaries of local boards of health, with the exception of the Commissioner of Health of Baltimore City. Both the county and town health officers are, as a class, very greatly underpaid, their salaries ranging from \$150 up to \$1,000. The highest paid local health officer is the Health Officer of Baltimore County, who receives a salary of \$1,000 per annum, and is also allowed an office and a clerk. The pay is, of course, wholly insufficient to enable these officers to live, and they are practically all dependent upon their private practice.

The efficiency of sanitary administration must evidently be greatly dependent upon the character of work done by local boards of health, and it is perfectly evident that these local boards can not operate without sufficient health officers, and it is manifestly impossible to secure efficient service for the miserable pay given by the average county or town. Some of these officers, however, have given very valuable service to the State, even under the most adverse conditions. The low scale of compensation is probably the most serious obstacle to efficiency in local administration, but another obstacle of almost equal importance is frequent rotation in office on account of political changes. Under the existing conditions in this State, the local health officers take up the duties of their office wholly untrained, and those who are most capable become sufficiently familiar with their work about the end of their two years' term to be of real value to their communities, and it frequently happens that just about the time when a local health officer has reached the stage when he has become a good public servant, capable of making a record in public health work, some political change throws him out of office and all of his training and experience is lost to the public.

Irrespective of other considerations, I believe it very desirable to increase the term of health officers to a period of six years or

longer and provide a salary commensurate with the importance of the work.

While not mandatory under our statutes and not as a rule required by the various town charters, city and town health officers have been requested to furnish reports. . . . Reports were furnished by the health officers of seven towns and eleven town health officers furnished no reports.

Under the provisions of Section 28, of Article 43, of the Code of Public General Laws of Maryland, county health officers are required to report to the Secretary of the State Board of Health annually upon the sanitary conditions of their counties and upon the administration of their office. . . . It will be noted that thirteen of the twenty-three health officers did not furnish reports as required by law.

Considerable difficulty was experienced with St. Mary's County during 1909 in compelling the County Commissioners to execute the mandatory provisions of . . . Chapter 413³² of the Acts of the General Assembly of 1904, requiring the disinfection of premises vacated by the death or removal of tuberculosis occupants and it became necessary to threaten mandamus proceedings against the county in order to compel it to comply with the law. A similar difficulty in Allegany County was promptly adjusted by the County Commissioners.

The same trouble has existed with the local registrars of vital statistics, but now is almost completely remedied by the provisions of the law of 1912, which we have already noted. The new and important work of the Bureau of Sanitary Engineering is also hampered by difficulties with localities.³³ The remedy for the lack of control of local health officers is, of course, to make all health officers state officials in the fullest sense of the term, subject to the orders of their superiors.

There may also be suggested as desirable a closer correlation of the various branches of state work concerned with the public health. The examining boards for the various professions are perhaps best constituted as they are, independent and composed of members who come from those professions. There might be a closer connection between the department of health, one of whose functions is to prevent tuberculosis, and the Maryland Tuberculosis Sanatorium, whose purpose is to cure it. By such correlation,

³² Sec. 34J.

³³ For an illustration of this see the controversy arising out of the purchase of the Jones Falls Valley sewerage plant by the commissioners of Baltimore County.

a saving in expense in administration would be effected and divided efforts would be united and made more harmonious and efficient.

U. S. HEALTH DEPARTMENT REVIEW

Since the writing of this chapter, the federal government has made a report on the Maryland health service. This review, which was made public in Washington on January 29, 1914, is the result of an investigation of Maryland public health administration by the federal Public Health Service, and is the first of a series of such studies. "The work was begun last July and continued without interruption until now. The work of the state board was carefully investigated in Baltimore and in every county." The report is embodied in a pamphlet of nearly one hundred pages, including many tables. Surgeon Fox finds much to praise, and praises unstintingly where praise is deserved. He finds, on the other hand, some features of the work that might be improved, and some faults to be remedied. The results of his investigation are embodied in a series of recommendations.

Sanitary Districts.—These recommendations include the division of the State into ten sanitary districts, with a physician in charge of each district, who shall be given an office and an adequate number of assistants, including inspectors, nurses and a clerk. This physician shall be paid by the State and shall not practice medicine or engage in any private business. His duties shall include supervision of the work of all county, city, or town health officials, the enforcement of the law regarding the notification of cases of disease; inspection of dairies, canneries, and all places of business or manufacture within his jurisdiction; the inspection of county schools and school children; the investigation of nuisances and the abatement of the same; investigation of cases of sickness and institution of measures for the control of disease; the enforcement of the vaccination act; the keeping of complete records of transactions and forwarding all necessary reports to the State Department of Health; the delivery of public lectures throughout his district; the collection of samples for analysis; the enforcement of the laws relating to the registration of births and deaths; and the performance of all other duties that may be required of him by the state department of health.

Water and Sewerage.—Another recommendation is that a comprehensive law be enacted making it compulsory on the part of all persons interested to have plans for proposed installations of water supplies, sewerage or refuse-disposal systems approved by the State

Department of Health; that the State Department of Health be empowered to require any changes or extensions in already existing installations that may be necessary to insure pure water supplies or proper sewerage or refuse-disposal systems, or to order the installation of new water supply and sewerage or refuse-disposal systems in the absence of same, and giving the State Department of Health the power to close or to prevent the use of water from any well, spring, etc., that, in its opinion, is dangerous to health, or to require the filling or draining of places where there is any accumulation of stagnant water, breeding of mosquitoes or other nuisance.

That the State be divided into at least four districts, in each of which shall be placed a representative of the State Department, to be known as district engineer, and to come under the supervision of the Bureau of Sanitary Engineering, and to be a graduate engineer or sanitary engineer.

An appropriation of at least \$50,000 is recommended for this reorganization and not less than \$15,000 for the Bureau of Sanitary Engineering.

New Laws Proposed.—Other recommendations are: that a statewide campaign be carried on against typhoid fever; that investigative studies be carried on in the state relative to pellagra, trachoma, hookworm, infantile morbidity and mortality, and malaria; that the vaccine agency be abolished and its functions given to the Department of Health, and the Vaccination Act be amended so as to make it stronger and modern; that laws be enacted providing for the maintenance of sanitation of factories, canneries, stables, hotels, restaurants, etc.; that the maintenance of the sanitation of dairies and the control of milk supplies be taken out of the hands of the State Live Stock Sanitary Board and placed in the hands of the State Department of Health, and that more adequate laws and regulations be made to cover the subject; that a law be enacted requiring the reporting of all marriages and divorces to the State Department of Health; that a system of school inspections be inaugurated and carried on throughout the State.

Since the study of the Department of Health was begun certain of the matters recommended in this report have already been acted upon by the state board. Bills have been prepared for introduction into the legislature relating to an increase in the secretary's salary, the maintenance of sanitation in all places where food products are manufactured or sold, the formation of an adequate, distinct field force, and a comprehensive control of water supplies and sewerage systems. In addition, the board has decided on a standard working day of seven hours, a new birth certificate has been adopted, and the City of Baltimore is now sending its daily morbidity report sheets to the State Department of Health every seven days.⁸⁴

On February 10, 1914, a bill was introduced in the State Senate which proposed to divide the State into the ten recommended sanitary districts, and incidentally to increase the salary of the state secretary \$500; and the prospects of improved public health legislation for Maryland seem somewhat favorable.

⁸⁴ Baltimore American, January 29, 1914.

CHAPTER III

CHARITIES AND CORRECTIONS

In this chapter¹ will be treated three branches of administration, all of them closely similar, yet all of them distinct: charities, including hospitals; care of the insane; and corrections, including the Penitentiary, the House of Correction, and various reformatories.

CHARITIES

There is no uniform or centralized system of charities in the State. Assistance is given to benevolent institutions in a haphazard, irregular way, although a Board of State Aid and Charities with incomplete powers has a limited supervision of these institutions.

Almshouses and Trustees of the Poor.—There are almshouses and trustees of the poor² in every county and in Baltimore City which come under state law. In 1906 the name of these "institutions for the care and custody of the indigent poor" was changed to "county homes." The trustees of the poor are county (or city) officers. It is unlawful for them to retain in a county home for a period longer than ninety days any child between three and sixteen years of age, unless such child is an unteachable idiot or is otherwise incapacitated for labor or service. Such

¹ It should be noted that to some extent in this chapter references, especially those concerning correctional institutions, are made to the Code of Public General Laws of 1904 (Poe's Code) on account of the fact that the Code of 1912 is divided into "Civil" and "Criminal" and the Criminal Code is not yet published. The author was informed by Mr. William H. Davenport, who is secretary of the Board of State Aid and Charities, that this method is justifiable for the reason that the organization of institutions like the Penitentiary and the House of Correction has not been changed materially since 1904.

² Code 1912, art. iv, sec. 1 ff.

children are to be placed in respectable families or in educational institutions or homes for children. It is the duty of the trustees of the poor, personally or through some appointed person, to visit children so placed at least every six months, and to make inquiry into their treatment and welfare.

Board of State Aid and Charities.—A Board of State Aid and Charities was instituted in 1900.³ It is an unpaid board, composed of seven members, appointed for terms of two years, by the governor; at least two of them must be from the counties, and not more than four of them may be reappointed. They appoint a salaried secretary. The board is given the power of investigating the condition and management of all public or other charitable institutions receiving state aid. It reports to and makes recommendations to the General Assembly. The secretary conducts the actual work of investigation and is subject to orders from the Senate Finance Committee and the Ways and Means Committee of the House of Delegates. Pauper and vagrant children are not to be brought into the State without the consent of this board. With only powers of investigation and advice, it will be seen that this body in no way approaches an organ of centralization and coordination of benevolent efforts in the State.

We shall examine in detail, first, the work of this board and, after that, the various groups of institutions which are under its supervision. The present board seems to be well constituted, free from political influence, and energetic in doing the best within its powers. It recently issued the Seventh Biennial Report of the Board of State Aid and Charities, which includes a complete account of all the various branches of state charity in Maryland, based on a new and thorough investigation, and much of the information in the following pages is obtained from this report.⁴

³ Laws 1900, ch. 679.

⁴ Where no reference is specifically made, this source will be implied.

Organization of the New Board.—The present Board of State Aid and Charities was appointed in April, 1912, and organized May 27, 1912. Section 4 of Article 88A of the Code of Public General Laws, which outlines the duties of the board, reads in part as follows:

It shall investigate and consider the whole system of state aid to public and other institutions receiving state aid in this State. To this end it shall have power to make an investigation at any time into the condition and management of any institution financially aided by this State, and may demand such information, statistical or otherwise, as it may desire from the officers, directors or employees of such institution, or it may direct such an investigation to be made by a committee of its members or by its secretary; within one week after the convening of every regular session of the General Assembly it shall furnish to the Chairman of the Finance Committee of the Senate, and of the Ways and Means Committee of the House of Delegates, a printed report of the condition of all the institutions receiving financial aid from the State and shall further make such recommendations as to the appropriations for such institutions as may seem wise and for the best interest of this State, giving the reasons for such recommendations as fully as may be practicable.

There are at the present time one hundred and twenty-two institutions receiving money from the State. These institutions are scattered from one end of the State to the other, and range from a day nursery with nine or ten children in attendance up to the State Hospital for the Insane with 1500 patients.

The work of the board has called for the supervision of an expenditure of some \$4,000,000 of state money during the last two years, and the probabilities are that this sum will increase rather than diminish. The State last year appropriated \$1,389,187.72 for the maintenance of charitable institutions alone. This sum is equivalent to about fourteen cents on the tax rate with the present taxable basis, or a little less than half the State's income from direct taxes.

Although this board is given authority to investigate institutions, it is not given the power to summon witnesses or administer oaths. It is also charged with the duty of recommending a system for state aid, and yet it is given

no organic connection with the other departments of the state government, knowledge of whose workings is absolutely essential to any proper system. Furthermore, just what organizations come under the jurisdiction of the board is doubtful under the present law, and there is no definite statement as to where its duties stop and those of other departments of the state government, such as the Board of Education, begin.

Principles on which State Aid Should be Given.—There apparently has never been any systematic basis for the state appropriations for charitable purposes. This fact was fully recognized by the previous boards, and they proposed certain legislation establishing such a basis, which, however, was not passed.

After a general review of the problem of state aid to charitable and correctional institutions, the board in its Seventh Biennial Report lays down the following principles as fundamental: that no appropriation should be granted for any purpose unless either the community is thereby protected from danger or harm or the work is necessary to guarantee the future welfare of the State; that until the State is in a position to perform a service for all of a certain class of people, it has no right to perform it for special individuals or arbitrary groupings of individuals; that it owes to the people for whom the service is directly performed a duty to see that they get the very best treatment it can give to them; that it is under obligation to the taxpayer to see that these services are secured for the least amount of money, whether the instrumentality used be public or private. In order to carry out these principles, the report continues, it will be necessary that the lump system of appropriations be done away with, and the State should enter into contracts with institutions doing work for it by which these institutions will be paid on a per capita basis according to the quality and quantity of work they actually do. We now have on our statute books a section which prohibits the use of state money for building purposes unless it is specifically appro-

priated for this purpose. The State should go further and require that the title of all buildings provided for from state appropriations should vest in the State, or that the State should be given a lien which will prevent the property from ever being used for any purpose other than that for which the money is appropriated.

State Aided Institutions Under the Supervision of the Board.—The general hospitals constitute one of the most complex problems with which the Board of State Aid and Charities has to deal. There are twenty-four of these institutions to which the State gives aid, located so as to cover practically the entire State, and ranging in size from the hospital at Leonardtown with about fifteen beds to the Mercy Hospital in Baltimore with its average of three hundred patients. Two of these hospitals are state institutions, namely, the Miners' Hospital at Frostburg and the Home and Infirmary of Western Maryland at Cumberland. The others are private institutions over which the State has absolutely no control. Some of these cater largely to the wealthy, and provide a very much more expensive grade of service than is needed by the people generally. Furthermore, the standards of efficiency in these hospitals vary from the best to some that the board considers hardly passable. The financial control and administration of some are exceedingly good, while in others there is evidence of extravagance.⁵

The Board of State Aid and Charities is of the opinion that at least one half of the cost of treating patients in hospitals should be borne by the local communities, and in a bill, tentatively framed, it has provided that one half the cost of the hospital treatment be charged to the county or the city, as the case may be, from which the patient comes.

Consideration of the problems presented by the special hospitals may be divided into three classes: first, problems

⁵ The problems connected with the proper adjustment of financial arrangements between the State, the City of Baltimore, and the privately administered hospitals are discussed in detail in the Seventh Biennial Report.

connected with the eye, ear, nose, and throat hospitals; second, those related to the hospitals for crippled children; third, those incident to the proper care of sufferers from tuberculosis.

Taking up first the eye, ear, nose, and throat hospitals, we find that there are only two institutions in this class receiving state aid, namely, the Baltimore Ear, Eye and Throat Charity Hospital, and the South Baltimore Ear, Eye, Nose and Throat Charity Hospital. These institutions are apparently doing good work. The Board of State Aid and Charities considers that the work of the Baltimore Ear, Eye, Nose and Throat Charity Hospital is one which, as long as the policy of subsidies to private institutions is continued, should find a place on the list of the state appropriations.

There are two special hospitals dealing with the care of crippled children, namely, the James Lawrence Kerman Hospital and the Children's Hospital School. Both of these institutions are doing excellent work. The Children's Hospital School is located in a new building well equipped for the purpose, and has the services of nurses from the Church Home and Infirmary. Its per capita cost shows the result of careful management and of equipment suited to its purpose.

By far the greatest problem presented under the head of special hospitals, however, is that connected with the state care of sufferers from tuberculosis. The fact that about ten per cent of all the deaths in 1913 were due to tuberculosis, and that this percentage is somewhat lower than it had been previously, is sufficient to make this a subject for most careful consideration.

In 1902 and 1904⁶ the governor was authorized to appoint a tuberculosis commission, consisting of five members, three of whom had to be physicians. They were to investigate tuberculosis in Maryland and the means of controlling it, and were to study the question of establishing a tuberculosis

⁶ Laws 1902, ch. 451; 1904, ch. 476.

sanatorium, and to report concerning its construction, cost, equipment, location, and so on. The members were to serve for terms of two years, and without pay except expenses. Unlike practically all other commissions and boards in Maryland administration, this commission was made self-perpetuating; the members were to fill vacancies by a majority vote of their own number. They were required to make a report of their investigations by January, 1906. All hospitals and similar institutions receiving state aid were required to report to the commission facts which might aid it in its investigation, as, for example, every case of tuberculosis, on blanks furnished by the commission. Since 1892⁷ an annual appropriation of \$2000 had been made for the investigation of tuberculosis, and this was applied to this work.

The work of this commission in investigating tuberculosis was subordinate and temporary. The investigation and control generally of the disease in the State falls within the sphere of the health department. Recommendations were made, and an act of 1906⁸ established the Maryland Tuberculosis Sanatorium. This institution is governed by a board of managers consisting of the governor, the comptroller, the treasurer, and a number of other persons which was formerly six, but was increased in 1908⁹ to seven, who are appointed by the governor, with the consent of the Senate, with alternating terms of office. They must be non-partisan, and must be technically experienced; they receive no pay. The governor appoints to vacancies. The board, known as the Board of Managers, hires and discharges employes, and sends a report annually to the governor, who transmits it to the General Assembly. The board has complete charge of the sanatorium, which is located near Sabillasville in the heart of the Blue Ridge Mountains, on the line of the Western Maryland Railway about sixty-nine miles from

⁷ Laws 1892, ch. 451, secs. 3, 4.

⁸ Laws 1906, ch. 308.

⁹ Laws 1908, ch. 328.

Baltimore. It was spoken of by the governor in 1910 as "the leading institution of its kind in the United States," and as having "served as a model for many other States which were organizing institutions for the purpose of fighting the 'white plague.'"

It was opened in August, 1908, and by 1910 consisted of an administration building, a dining hall, an infirmary, eight pavilions, a house for heating and lighting purposes, a cottage for the farmer, and some small buildings. Since then, constant additions and improvements have been made. At the close of 1911 the number of patients in the institution was 210, and by the loan of 1910 the capacity was increased by about 200.¹⁰ Persons who can afford to pay are expected to do so, but there are certain free beds, and in 1912¹¹ it was stated that "preference is given so far as the maintenance is sufficient, to free treatment." The institution is devoted entirely to persons suffering from tuberculosis in a curable form who present a reasonable hope of recovery.

In addition to the State Sanatorium, there are two private sanatoriums which have received state aid, the Hospital for Consumptives of Maryland, popularly known as Eudowood, and the Jewish Home for Consumptives at Reisterstown. These care for both incipient and advanced cases. A private concern had also instituted a tuberculosis sanatorium (Pine Bluff Sanatorium) on the Eastern Shore near Salisbury. In 1912¹² this was purchased by the State. These sanatoriums provide sufficient accommodations for white consumptives in Maryland. What is now needed is adequate provision for the colored tuberculous patients in the State.

In addition to a hospital for tuberculous negroes, the state board recommends that there be established a chain of small local hospitals somewhat similar to that at Pine Bluff for the care of the advanced cases in the communities immediately surrounding them. Such patients as are deemed by the local health officers to be a menace to the health of

¹⁰ Report 1912.

¹¹ Ibid.

¹² Laws 1912, ch. 650.

the community or such sufferers as are not in a position to get proper care should be removed to these local institutions.

In addition, it is urged that the system of tuberculous visiting nurses established in Baltimore and in several counties be extended either under state or other auspices to cover the entire State. Experience has proved that these nurses are necessary to the proper care of the sufferers.

If this work for the prevention and cure of tuberculosis is to be properly and systematically done, it is necessary that it be under the direction of some guiding hand. Furthermore, it is fairly certain that a central body could more economically handle the two tuberculosis sanatoriums now in existence and the proposed sanatorium for negroes than could separate organizations. The commission having in charge the conduct of the State Sanatorium has proved its efficiency, and by its experience has become conversant with methods of dealing with tuberculosis. It is therefore desirable that a law be enacted making the commission of the present State Sanatorium the managing body of all sanatoriums now or hereafter erected by the State, and giving it authority to inspect them and to advise as to the conduct of all sanatoriums or other organizations for the treatment of tuberculosis now supported wholly or in part by the State or any of its subdivisions.

Among the most important of the charitable duties which fall to the State is provision for such children as for one cause or another must be taken care of by the public. The State supports, either partially or entirely, various orphanages and placing-out agencies, reformatories, and schools for defectives. Practically all of them, however, are under private management, and, aside from giving money to them, the State has never set any standards which control the training of these classes of children. The Board of Education has even taken the stand that the Compulsory Education Law does not apply to children in institutions.

The orphan asylum until very recently was the only

known way of taking care of dependent children. According to the best information that can be gathered, there are now in this State forty orphan asylums in actual operation. These care for an average population of 2517 children; eighteen of these, caring for 1879 children, receive aid from the State, and therefore come under the jurisdiction of the board. Many of these institutions are doing excellent work and are as good as any to be found in the country.

*New Legislation Proposed by the Board.*¹⁸—The Board of State Aid and Charities in its Seventh Biennial Report makes certain criticisms and recommendations which we shall briefly mention. First, since the board holds office for only two years, its tenure should be lengthened, and the terms of members should interlock in order that men familiar with the work will remain in office. This lengthening of tenure is needed especially in the case of the secretary, and this officer should be required to be a trained social worker. A similar need is that the system of reports and procedure should be made permanent, as frequent alteration of it causes confusion. Because the board must supervise many institutions for women and girls, it is urged that two women be made members of the board. There should be greater coordination between the work of the Board of State Aid and Charities and other departments of state administration. It is further claimed that the board should be given supervision of almshouses and jails and of the Penitentiary and the House of Correction. Some such supervision is needed, as will be seen in a later part of this chapter, but probably this should be vested in a special board. The Board of State Aid and Charities makes two valuable suggestions regarding the general system of state aid. Aid to charitable institutions, it says, should be put on a contract basis, in order that the State may be assured of value received for money paid. Finally, each governmental unit

¹⁸ The following criticism of present administrative conditions and recommendations for their improvement are taken from the Seventh Biennial Report of the board, the language of that report being closely followed.

should bear part of the expense of its sick and dependent citizens. The plan of part state and part local pay should be extended to cover all classes of dependents.

Even if the first mentioned changes were made in its organization and powers, it is doubtful if the position of the Board of State Aid and Charities would be satisfactory. This board should not be merely an advisory one. There seems to be every reason for giving it complete control of state benevolence, and control, rather than supervision, of state aided institutions; this should be done, of course, after educational and like matters have been removed from its scope and its field has become properly defined. Only in this way, and also by gradual elimination of state aid to private charities, may the state charities system become well organized and efficient.

THE INSANE¹⁴

Laws for the care of the insane in Maryland are found as far back as 1826. The insane of the pauper class, that is, those without means of self-support and without relatives or friends to keep them, formerly were committed to the county or city almshouses or to hospitals by the county commissioners in the counties, and by the "supervisors of city charities of the department of Charities and Corrections" in Baltimore City. If these officers were uncertain as to the sanity of a person, they might take the matter to court, and have it decided by a jury. If the person concerned or his relatives or friends demanded this examination, it had to be made. The local trustees of the poor received insane persons committed to their respective almshouses and charged the county or city, as the case might be, for their support.

By laws of 1904 and 1908¹⁵ it was provided that after January 1, 1911, all dependent insane residents of the State

¹⁴ Code 1912, art. lix, sec. 1 ff.

¹⁵ Laws 1904, ch. 421; 1908, ch. 435.

were to be charges of the State, and such persons who were then in local almshouses and asylums were to be removed to state insane hospitals. For furthering this purpose a special lunacy commission was appointed by the governor, of which he was a member *ex officio*, which reported to the next legislature on amendments and other measures deemed necessary for the care and treatment of the insane, including plans for the enlargement of the existing state insane hospitals or the creation of new ones.

This system of state care of the indigent insane was never put fully into effect, and a seeming abandonment of it is found in an act of 1910¹⁶ which provided that for each patient in any state insane institution who was from a county or the City of Baltimore, the county or city, as the case might be, must pay the State \$100 for board, care, and treatment, and that the remainder of the expense should be borne by the State. This leaves the matter in a rather confused and unsatisfactory condition. Efforts are being made, and with increased success, to provide for the state care of all indigent insane. While the existing state hospitals have never become of the capacity to accommodate all such indigent insane, they are being enlarged and added to, and it would seem that in time the provisions of the acts of 1904 and 1908, which have never been repealed, will be carried out. This matter will be considered more in detail in the following paragraphs.

Under the present system of state care of the insane, "reimbursing patients," who pay partly for their own care, may be admitted to insane hospitals, but no one can be committed who has, through relatives or friends, any means of complete support.

Involuntary commitments to insane institutions cannot be made without certificates, not over thirty days old, from two qualified physicians who were not related to the person examined and were not connected with the institution to which it is proposed to make the commitment, and who have

¹⁶ Laws 1910, ch. 715, sec. 380.

made separate examinations and found it necessary that the person be committed to such institution.

Those in charge of an asylum which is authorized to hold in custody insane persons may appoint employes as policemen, who, under orders, may pursue, arrest, and return escaped inmates. The Lunacy Commission, which will be discussed later, is vested with coroners' powers in regard to deaths in asylums. It may at its discretion transfer violent patients from county institutions to state hospitals, at the expense of the county, or may transfer chronic cases from state hospitals to county institutions. The superintendent or chief medical officer of an asylum may parole or discharge except in cases of criminal insane.

In 1910 the Lunacy Commission was given power to appoint a board of five "visitors," without pay, for each county asylum and almshouse. These persons must be residents of the respective county, and two must be women; all members have the power of inspection and recommendation, and they are to make monthly reports of their visits. The personnel of these boards may be changed by the commission at pleasure.

The board of directors of the Penitentiary or of the House of Correction may summon the Lunacy Commission to examine and pass upon the sanity of a convict, and if the commission finds him insane it makes complaint to a criminal court of the county or city, which orders his removal to an insane asylum, at state expense.

Regarding the expense connected with the care of the state insane, the counties and Baltimore City, as before stated, must pay \$100 for each person sent to a state insane hospital, the remaining expense being paid from the state treasury. The cost of keeping the patients is certified by the superintendents of the institutions to the comptroller, who collects the proper proportion from the counties. This expense is met by the county by taxation. If it remains unpaid, it is recovered by action by the attorney-general; and if it remains unpaid after a levy of taxes in the county,

a rate of one per cent interest per month is charged the county. If it is found that a patient is not a proper charge against any particular county, he becomes completely a state charge. Debts of the county for the support of an insane person in a state hospital are made charges against the estate of that person if he has no heirs; but no real property of the estate may be sold for this purpose during his lifetime, and no personal property may be sold after five years, except by order of a proper court. If so sold, the proceeds must be invested safely for the benefit of the insane person.

There was recently organized a Mental Hygiene Committee, which is a private institution, and which has been doing effective work in the prevention of insanity and in the after-care of patients from insane institutions. A number of well-known scientists are members of the committee. It has been urged that state aid be extended to this very valuable work.

Lunacy Commission.—Since 1886 there has been a Lunacy Commission in Maryland,¹⁷ with supervision of all public and private institutions for the insane. It consists of four commissioners appointed by the governor, who, together with the attorney-general, serve for terms of four years; the governor is a member *ex officio*. They receive no pay but are allowed expenses. At least three of them must be from Baltimore City; two must be graduate physicians of some recognized medical college and must have had five years' practice; one of these must have had two years' experience in treatment of the insane; and no member is to have any pecuniary interest in any insane institution or in the supplies for or treatment of its inmates.

The commission appoints a secretary, who is a qualified physician with at least two years' experience in mental diseases, and who receives a salary of \$2500 and is allowed \$2500 a year for conducting the work of the commission. Meetings are held monthly, and also at any time at the

¹⁷ Code 1912, art. lix, sec. 12 ff.

request of two members. There are regular semi-annual meetings, which the several boards of managers of the various state hospitals for the insane and feeble-minded are required to attend, for the purposes of "consultation and more harmonious and effective administration." The commission is charged with the "custody, treatment, and cure of the insane."

The powers and duties of the commissioners are as follows: They are to investigate and supervise all insane institutions, public and private, in the State, including an inspection of treatment, sanitation, diet, and records. The secretary, or one member at least, is to visit every such institution at intervals of not less than six months. Visits may be made at any time, day or night; and on these visits patients are to be given the opportunity to talk privately with the visitor. Furthermore, every inmate of an asylum must be allowed correspondence with the Lunacy Commission, as well as with one person not a member of the commission. They are to encourage scientific research by publishing bulletins of the scientific and administrative work done by officers of such institutions. If they find a person whom they believe to be improperly detained, they may, through the state's attorney, bring the matter into court. They may also visit sanatoriums and hospitals, public and private, to discover if any insane persons are held there contrary to the law. All officers of both of these classes of institutions are bound to give them free access and any information desired. They are empowered to summon witnesses, administer oaths, and take testimony in cases to determine whether or not a person is wrongfully detained, and to present offenders to the grand jury. From this the managers of the institution may appeal as from cases before a justice of the peace. The commission makes annual reports to the governor, which include reports that they have required from institutions under their supervision, together with recommendations. The reports of institutions to them must contain records of each patient, accounts of all accidents that have occurred, and all restraints used.

By act of 1910¹⁸ the commission was divided into hospital district committees. All private institutions for the insane must obtain licenses from the Lunacy Commission; but this does not include any state or incorporated institution in the counties except where a county almshouse receives insane persons from another county for pay. The application for such a license must contain all plans and details of the proposed institution,—number of patients to be accommodated, and so on. The license may be refused, in which case appeal may be taken to the courts.

*Insane Hospitals.*¹⁹—There are five state insane hospitals: the Maryland Hospital for the Insane, or Spring Grove State Hospital, at Catonsville; the Springfield State Hospital at Sykesville; the Hospital for the Negro Insane of Maryland, or Crownsville State Hospital; the Maryland Asylum and Training School for the Feeble Minded, or Rosewood State Training School, at Owings Mills; and the Eastern Shore State Hospital. The first four of these institutions, according to their reports, had a total of about 2821 patients on October 1, 1913. Generally it may be said that the governor appoints the managing boards of these institutions and that they are efficiently conducted by well trained physicians. A central purchasing committee recently established will probably cause greater economy in the buying of supplies.

In 1910²⁰ a loan of \$600,000 was created for their benefit, and \$100,000 of this was set aside for the Crownsville negro hospital, constructed after that date. Similarly, in 1912²¹ the sum of \$200,000 out of a total insane hospital loan of \$800,000 provided for the building of the new Eastern Shore State Hospital, which was the result of a demand for a hospital for the accommodation of insane patients from the Eastern Shore.

¹⁸ Laws 1910, ch. 715, sec. 38A.

¹⁹ For organization of the various hospitals and accounts of loans, see Lunacy Commission Report 1913. Also Code 1912, arts. xlv, lix, xxxi; Laws 1910, ch. 250; 1888, ch. 183; 1894, ch. 562; 1912, ch. 187.

²⁰ Laws 1910, ch. 250.

²¹ Laws 1912, ch. 187.

Still greater support, however, is needed, according to the reports of these institutions and of the Lunacy Commission, and it seems only proper that Maryland, having undertaken a system of state care of its indigent insane, should give aid sufficient to provide adequate accommodations for all of that class of its inhabitants. The organization of the system of state insane hospitals is good. The Lunacy Commission has only supervisory and not controlling authority over the insane hospitals, but this seems wise in the case of institutions conducted by experts and maintained, to a considerable extent, as completely separate institutions.

CORRECTIONS

The correctional and penal institutions in Maryland are various reformatories, the House of Correction, and the State Penitentiary. These will be considered in the order named.

Reformatories.—The following correctional, state-aided institutions have a semi-, or perhaps, more correctly, a pseudo-state character. Some of them have on their governing boards members appointed by the governor; all are authorized to receive inmates on commitment from the state courts.²² (1) The House of the Good Shepherd, for white girls under eighteen, must report annually to the governor. (2) The House of the Good Shepherd, for colored girls, is conducted like the one for white girls. (3) The House of Reformation, for colored boys. Two members of a board of sixteen managers are appointed by the governor. The board must report to the General Assembly. (4) The House of Refuge, for white male children. Four members of a board of twenty-four managers are appointed by the governor. The board must report to the General Assembly. (5) The House of Refuge, female. Ten out of thirty directors are appointed by the governor, with the consent of the Senate. (6) The Industrial Home for Colored Girls.

²² Code 1904, art. xxvii, sec. 477 ff.

Two out of eleven managers are appointed by the governor. The board must report to the General Assembly. (7) St. Mary's Industrial School for Boys, for orphan and destitute boys. The governor appoints every two years three persons to the board of trustees.

The House of Correction.—The Maryland House of Correction,²³ established in 1874,²⁴ was reorganized by act of 1884²⁵ and was placed under the control of a board of managers constituted as follows: the governor, the comptroller, the attorney-general, and the treasurer, for the time being ex officio members, and nine other members appointed by the governor with rotating terms of office, so that three of them go out of office every two years. This board has all power of making rules and regulations, appointing officers and employes, and so on, for the running of the institution.

There are specific enumerations of persons who may be sent to the House of Correction, but the general rule is that "whenever any person may be convicted in any of the courts of this State for any crime or misdemeanor, who is liable under existing law to be sentenced to imprisonment for a period not less than two months and not exceeding one year, such court may, in its discretion, sentence such person to be confined in said house of correction, instead of other place of confinement."

In addition to many faults in the method of conducting the House of Correction with which it is not possible to deal in this study, such as cruel punishment, insanitary conditions, and so on, there is one evil which may be considered administrative in character. This is the system of contract labor, which in the Maryland Penitentiary has been so strongly condemned. The system should be abolished.

The Maryland Penitentiary.—The State Penitentiary²⁶ is managed by a board of six directors, who are appointed, two

²³ Code 1904, art. xxvii, sec. 462 ff.

²⁴ Laws 1874, ch. 233.

²⁵ Laws 1884, ch. 513.

²⁶ Code 1904, art. xxvii, sec. 548 ff.

every two years, by the governor, with the consent of the Senate, and who receive two dollars a day for time spent in fulfilling their duties. These directors annually appoint a warden, whom they may discharge, and who receives \$4000 per year, allowance for subsistence, and occupancy of a residence at the Penitentiary. The warden appoints, subject to the approval of the board, an assistant warden, a physician, and a matron, and deputies, guards, and other employes, whose compensation is determined by the board of directors.

No person officially connected with the Penitentiary may be interested in any way in any sale or purchase by or for the institution, although the directors may authorize the payment of officers in goods, work, or manufactures of the Penitentiary. The directors are authorized to enter into contract for the employment of the convicts and for the sale of manufactures in the institution. The directors are required to make special financial reports to the comptroller, and general and financial reports every month and every year to the governor, who transmits them to the legislature; in addition to this, the criminal court of Baltimore must, at each term, charge the grand jury to inquire into the conduct and management of the Penitentiary, and must direct a number of grand jurors, not over six, to visit and examine it.

Criticism.—The Maryland Penitentiary has long been a very profitable institution, but in a recent investigation which was made by the Maryland Penitentiary Penal Commission, appointed by the governor in 1912, the institution was found to be corrupt in management. According to the report of the commission made on February 4, 1913, many evils were found there, the worst of which, from an administrative point of view, was the existence of graft among those in charge. The commission recommended important changes in the entire state penal system. The contract system of labor, it said, though profitable, should be abolished, and there should be substituted either the "state use" sys-

tem, by which the State manufactures goods for its own institutions, or the "state account" system, by which the State goes into the open market with the products of its own penal industries. The determination upon one or both of these systems should be made after an investigation of local conditions, including local markets, and so on. In addition to following these suggestions of the commission, it may be remarked that the system of convict labor on state roads, which has been used in other States, notably Colorado, with benefit to both the State and its prisoners, might be found to be suited to Maryland conditions.

The commission recommended that all county jails—which, incidentally, it describes as "abominable"—and all city jails "be abolished as places of final sentence, and be maintained purely as places of detention for those awaiting trial." It urged some better supervision of the reformatories of the State and the abolishment of duplication of work by them. Most important of all, the commission recommended that the boards of directors of all state penal institutions be abolished, and that there be created instead a central board of five "prison inspectors" to be appointed by the governor and to serve without pay, but to have a high-grade, high-salaried secretary. This board should have complete charge of all state penal institutions.

In 1912²⁷ the governor appointed a large Penal System Commission, composed of representatives of various state offices and state and other institutions, who were given the power to investigate all institutions where persons are detained for violation of the laws of the State. This commission reported on February 16, 1914, urging changes similar to those advocated by the Maryland Penitentiary Penal Commission. It recommended the creation of a State Board of Control to assume management of the State Penitentiary and the House of Correction, and in addition the establishment of an Advisory Board of Parole to assist the governor in the exercise of his powers of pardon and

²⁷ Laws 1912, ch. 596.

reprieve and to put into force a proposed indeterminate sentence system.

Some reorganization of the state penal system, based on the recommendations of these commissions, should, and probably soon will, be effected. If the penal institutions of the State are to be coordinated and controlled properly, they must be put under the management of a central board with complete authority over all of them.

CHAPTER IV

FINANCE

It need scarcely be remarked that the financial branch of state administration is one of the oldest, having necessarily existed from the beginning of the state government itself; although, of course, certain auxiliary financial offices, like those of state tax commissioner, state bank commissioner, and state insurance commissioner, are of very recent origin. It is not the primary purpose of this chapter to present a history of the financial machinery of the state government, but a word may be said as to its development.

Under the first constitution of 1776 two state treasurers were appointed by the House of Delegates, one from the Eastern Shore and one from the Western Shore.¹ They were directly responsible to the House of Delegates, who might examine their accounts or appoint auditors to do so. By the constitution of 1851 the system was changed, and the affairs of the treasury were divided between a comptroller and a treasurer; a comptroller was elected for a term of two years by the people, and a treasurer was appointed by the legislature at each biennial session and each was made a check upon the other. It was made the governor's duty to examine semi-annually the accounts of both officers and during a legislative recess he could appoint to a vacancy. While the comptroller's duty was to take care of state money, the treasurer's was to receive and disburse it.

Commentators on the constitution of 1851 considered the

¹ This method of bisecting the State with the Chesapeake Bay as the dividing line is frequently found in political affairs of the last century. It was based on convenience, no doubt, but probably also indicated a rivalry between the two "shores."

plan which went into effect at that date a great improvement over the former arrangement. Hinkley² said:

The whole department is remodelled. The Comptroller of the Treasury is a new officer designed as a check upon the Treasurer. The former is to be elected by the people, the latter by the legislature. This plan of giving authority to one from one source and to the other from another makes them, in a measure, independent of each other; and thereby the danger of collusion is greatly lessened. By the old system, there was no such check upon the Treasurer, the integrity of a single individual being the chief and almost only safeguard of the State in regard to its treasure.

This system of division of duties between the comptroller and the treasurer was not changed by the constitutions of 1864 and 1867, and remains fundamentally the same today.

The comptroller must give bond of \$50,000, with securities approved by the governor, and must report annually to the legislature, or, if this is not in session, to the governor, accounting for all funds, revenues, and expenditures of the State, and estimating the receipts and expenses for the current year.³ He must also have printed with the laws at each legislative session a statement of receipts and expenditures of state money, and his office is subject to inspection by the governor and members of the General Assembly. He also obtains reports concerning the revenues and taxes of the State. He checks up the treasurer by keeping an account between the latter officer and the State and by examining monthly the treasurer's own accounts. Persons or corporations having claims against the State for errors in taxes may present them to the comptroller, who reports them to the General Assembly in cases where he believes the claim to be just, after first deducting any indebtedness of such persons or corporations to the State. He directs state's attorneys to bring suit in the case of default of any receiver of public money, such as a court clerk, a registrar, a contractor, or a collector of taxes, after he has allowed a certain period to elapse and has given notice to the defaulter. Also, in cases of default, that is, where accounts

² Notes on the Constitution, p. 80.

³ Code 1912, art. xix, sec. 2 ff.

of such officers are in arrears, after thirty days' notice he advertises the default in newspapers for thirty days prior to a general election, except in cases of default unsettled for five years or over. He adjusts all claims of state's attorneys against the State; and similarly settles claims of the State against all receivers of public money and all state debtors, and may in certain cases (at present, if the debt accrued prior to or during 1908) make abatements subject to the approval of the governor and the treasurer, when he feels sure that the full amount could not be collected.

The comptroller sees to it that incorporated monied institutions publish unclaimed dividends and deposits. All associations and corporations, industrial, educational, medical, humane, military, or charitable, receiving state aid must file an annual itemized account with him, stating how their appropriations were spent, and if this is not done the comptroller stops the issue of further warrants for the delinquent institution. The comptroller has examinations made of the financial affairs of all these state-aided institutions.

In some cases the comptroller is given express power to refuse payment to state officers or institutions when he considers a certain expenditure an unnecessary one. This is provided in the case of the State Lunacy Commission. State-aided institutions are prohibited from using state money for land or buildings unless the appropriation was for that purpose.

The state treasurer,⁴ handling directly as he does the funds of the State, is required to give bond of \$200,000 with securities approved by the governor; and he in turn must require any agent whom he appoints to give like bond. The treasurer, like the comptroller, receives claims from errors in taxation and presents worthy ones to the legislature. He is authorized to appoint, without compensation,

⁴ Code 1912, art. xciv, sec. 2 ff.; art. xxiii, secs. 106, 107, 110, 111, 115, 121, 157.

the president of an incorporated bank of Baltimore City as his agent to pay interest on the public debt.

It would be outside the sphere of this work to examine the great mass of corporation laws of the State, but many classes of corporations are brought under the financial supervision of the State, either through the bank commissioner, the insurance commissioner, or the treasurer. All corporations receiving money on deposit, like security and guaranty concerns, must deposit a certain amount of stock or bonds with the state treasurer, who pays interest obtained on them and holds them subject to the order of a court of competent jurisdiction. All such concerns must report semi-annually to the treasurer, and are subject to yearly examination by him or by one of his agents. In case a corporation attempts to do business without making its required deposit, the treasurer advertises the fact and reports to the attorney-general, who institutes proceedings. If he orders changes in such corporations and they are not made, he communicates with the attorney-general.

The treasurer receives fees collected by the tax commissioner for incorporations, receives the required deposits from insurance companies, and receives franchise taxes from all corporations. He must report at every session of the legislature on the condition of all corporations required to report to or to be examined by him.⁵

PUBLIC WORKS

The office of commissioner of public works was created by the constitution of 1851⁶ for the superintendence of the interests of the State in railway and canal companies, in which it was, at that time, extensively involved. There were four such commissioners, and the office was elective. Since their functions were practically the same as those of the present Board of Public Works, they will be outlined

⁵ The bank commissioner and the insurance commissioner will be treated later in this chapter.

⁶ Art. vii, sec. 1 ff.

here. They were to exercise a "diligent and faithful supervision of all Public Works" in which the State was interested as stockholder or creditor. They were to represent the State at all meetings of stockholders; to appoint directors in every railroad or canal company in which the State had constitutional power to appoint directors; to review from time to time the rates of tolls adopted by all such companies; to use legal powers which they possessed to obtain the establishment of rates of toll which might prevent injurious competition to the detriment of the interests of the State; so to adjust these rates as to promote agriculture in the State; at each session of the legislature to make a report, and to recommend such legislation as they deemed "necessary and requisite" to promote or protect the interest of the State in public works.

The State was divided into four districts, with one commissioner assigned to each district. A commissioner had to be for five years a resident of the district in which he was elected; and vacancies were appointed to by the governor. In case of an equal division of the board on any subject submitted to it, the treasurer was called upon to decide.

By the constitution of 1864⁷ the governor, the comptroller, and the treasurer were constituted the Board of Public Works, and this was continued by the present constitution, drawn up in 1867. This system obviously places the public works much more closely under the supervision of the principal financial officers of the State and tends toward centralized efficiency, while it incidentally saves in salary expenditure, since the governor, the comptroller, and the treasurer receive no additional salary as members of the board. A few slight changes were made by the constitution of 1867.⁸ Instead of personally representing the State at every meeting of stockholders of any railway or canal company in which the State is interested, the members of the board appoint representatives.

⁷ Art. vii.

⁸ Art. iii, sec. 34; art. xii.

The unique provision concerning noncompetitive rates was continued, but this was done by means of reports furnished by the state directors. They were to require the directors of these transportation companies "to guard the public interest and prevent the establishment of tolls which shall discriminate against the interest of citizens or products of Maryland, and from time to time and as often as there shall be any change in the rates of toll on any of these public works, to furnish to the Board a schedule of the modified rates." Thus they were to adjust rates so as to protect the agricultural interests of the State. Further, the president and the directors of the Chesapeake and Ohio Canal were required so to "regulate the tolls of said company as to produce the largest amount of revenue and to avoid injurious effects to the company of rival competition by other internal improvement companies." The motive for these interesting provisions seems to have been compounded of a belief in the injuriousness of competition, a desire to reap the largest possible profits from state enterprise, and a concomitant, if paradoxical, wish to protect the interests of the people, particularly the agricultural interests. But these provisions need not further be considered on account of their practical obsolescence. The period of large state investments in railways, canals, and like businesses has passed away; the principal duty of the Board of Public Works today is that of handling state bonds.⁹

It has a few other functions. In case of a controversy between a corporation in which the State is interested and its employees, the Board of Public Works may arbitrate if it deems it proper, and if both parties agree to arbitrate. If they refuse, the board reports the case to the next General Assembly.¹⁰ From 1868¹¹ to 1910 there could be submitted to it for final arbitration questions of difference arising between any two corporations in the State, or between a corporation and a citizen, in regard to locating, construct-

⁹ See page 12.

¹⁰ Code 1912, art. vii, sec. 1.

¹¹ Laws 1868, ch. 471, sec. 150.

ing, or working a railway or in respect to transportation charges. But matters of construction and transportation charges by railways now come under the jurisdiction of the comparatively new Public Service Commission.

The Board of Public Works appoints a commander and a deputy commander for, and in general has supervision of the State Fishery Force;¹² it buys equipment for it, removes officers for neglect or incompetence, and receives monthly financial reports from the commander. The board also appoints three persons as members of the Shellfish Commission,¹³ one from a tidewater county of the Eastern Shore, one from a tidewater county of the Western Shore, and one from Baltimore City, and designates one member as president; but the Shellfish Commission makes its report, which is in the form of a published pamphlet, directly to the legislature. The Board of Public Works is supposed to have charge of purchasing stationery for use in state offices.¹⁴

INVESTMENTS AND DEBT

Counties.—While the matter of county investment is distinct from that of state investment, the State exercises a certain supervision over the counties in this regard. The constitution¹⁵ provides that no county in this State shall contract any debt or obligation in the construction of any railroad, canal, or other work of internal improvement, or give or loan its credit to or in aid of any association or corporation, unless authorized by an act of the General Assembly, which shall be published for two months before an election for members of the House of Delegates in the newspapers of the county, and shall also be approved by a majority of all members elected to each house of the General Assembly at its next session after the said election.

¹² For further treatment see page 121 ff.

¹³ For further treatment see page 123 ff.

¹⁴ Code 1912, art. lxxviii, secs. 1-6.

¹⁵ Constitution 1867, art. iii, sec. 54.

The State.—The constitution of 1851¹⁶ provided that no state debt might be contracted by the legislature without a provision for an annual tax that would meet the interest as it fell due and that would also discharge the principal within fifteen years; and these taxes might not be repealed or applied in any other way until their purpose was accomplished. The total amount of state debt was limited to \$100,000, but it was provided that the legislature might borrow \$50,000 to meet a temporary deficiency in the treasury. In 1864¹⁷ the limitation of state indebtedness to \$100,000 was omitted. Under the constitution as it stands today the legislature in contracting a debt is still bound to provide an annual tax sufficient to meet the interest and to discharge the principal within fifteen years.¹⁸

In the process of disposing of the investments of the State in so-called internal improvements and in banking concerns, which began to take place about the middle of the last century, the Board of Public Works was naturally the body which carried on the disposition. Laws of 1892¹⁹ and 1906²⁰ provided that in selling, in pursuance of provisions of the last state constitution, the interest of the State in works of internal improvement or in any banking corporation the Board of Public Works was to advertise in newspapers and receive bids, which should be opened publicly; if bids were in its judgment high enough, it was to sell.

There are a number of general regulations in force at present concerning the conducting of the finances of the State, especially with reference to public debts and sinking funds. Money remaining in the treasury at the end of every fiscal year over \$150,000 and the amount necessary to meet the expenses of government and interest on public debt is held to the credit of the general sinking fund and invested by the treasurer in overdue obligations of the State,

¹⁶ Constitution 1851, art. iii, sec. 22.

¹⁷ Constitution 1864, art. iii, sec. 33.

¹⁸ Constitution 1867, art. iii.

¹⁹ Laws 1892, ch. 310.

²⁰ Laws 1906, ch. 185.

or, if these are not procurable, in not yet matured state obligations, or in United States securities, or in "such other productive stocks or bonds as the governor, Comptroller, and Treasurer may consider safe and reliable."²¹ At least \$100,000 must be set aside each year for the general sinking fund and invested in this manner. All securities purchased for this fund are held to its credit, and interest on those securities which are still to mature is credited to the fund until the securities mature and are redeemed, or are disposed of by the General Assembly.

When the comptroller believes that there is a surplus in the treasury above what is needed for current expenses, he is to invest it in bonds or certificates of the state debt, purchased at par or less;²² and, in this, preference is given to overdue debt. The comptroller and the treasurer may at any time require overdue debt of the State, or any part of it, to be presented for payment by giving at least thirty days' notice to the holders that on a certain day interest on it will cease. In any case of such buying up of state bonds they are to be cancelled, and the interest accrues to the credit of the sinking fund until the General Assembly may dispose of them.

All of the funded debts of the State, or parts of them, when redeemed are cancelled, except \$100,000 each year, which goes to the credit of the sinking fund;²³ but all parts of the funded debts of the State created for the benefit of "internal improvement works" or on account of the "tobacco debt" which are redeemed and purchased continue to be a charge against these particular debts, and are carried to the credit of the sinking fund for that purpose exclusively.

When, in the judgment of the Board of Public Works, the public interests will be subserved by it, the board may direct the treasurer to sell securities belonging to the sinking funds, and, if the proceeds are not needed to pay a debt

²¹ Code 1912, art. lxxxi, sec. 194.

²² *Ibid.*, art. xix, secs. 32, 33.

²³ *Ibid.*, art. xcv, secs. 8, 9.

of the State due or about to become due, they are to be reinvested by the treasurer in new sinking fund securities.²⁴

The comptroller and the treasurer, four times a year, are required, in the presence of the governor, to count and cancel the bonds and certificates for stocks of the State, to count and examine other securities purchased by the treasurer for use of the sinking fund, and to make a statement of this work, countersigned by the governor. The work must be gone over by committees from the legislature and reported to the legislature.²⁵

Stocks, bonds, and securities belonging to the State are deposited with some safe deposit company of Baltimore City, selected by the treasurer with the approval of the Board of Public Works; the treasurer is not allowed to have access alone to these, but must go in company with the comptroller or obtain a second key to the vaults from him. Both the treasurer and the comptroller keep books accounting for the securities, stocks, and bonds belonging to the sinking funds; these are open to inspection by the governor and by the Senate Finance Committee and the Ways and Means Committee of the House of Delegates.²⁶

TAXATION

Machinery of Taxation.—In the counties practically the entire process of taxation is in the hands of the county commissioners, subject, of course, to state imposition of taxes and state rules for collection. In Baltimore City the administration of the taxation system is divided between the mayor and the City Council and the appeal tax court.

The county commissioners and the mayor and the City Council respectively are given the power of "imposing taxes" and presenting them to the collectors. If they fail to do this, the governor appoints a tax board of three members, for the county or city as the case may be, who may be

²⁴ Code 1912, art. xcvi, sec. 31.

²⁵ *Ibid.*, sec. 23.

²⁶ *Ibid.*, secs. 28, 29.

taken from the State at large, who make the levy and receive compensation at the rate of three dollars a day.²⁷ The clerk to the county commissioners or to the appeal tax court, or the register of Baltimore City, makes returns of the assessors to such tax boards; and these officers also certify state assessments to the comptroller.

The collectors of taxes are chosen yearly in the counties by the county commissioners and in Baltimore City under local regulations; all collectors must give separate bond to the State, approved by the governor, although Garrett, Talbot, Montgomery, and Washington Counties are exempted from this latter provision. If no collector is chosen in a county or in the city, the governor appoints one from the State at large and approves his bond, or a separate collector of state taxes may be chosen in a county or in the city.²⁸

The county commissioners in the counties and the appeal tax court in Baltimore have powers of valuation and assessment and, after notice, of revaluation and reassessment;²⁹ in this, they work through assessors and collectors, whose compensation is fixed by the county commissioners or by the mayor and the City Council.³⁰

The commissioner of the land office, the clerks of courts, and the registers of wills make returns to the tax officials which will help them to keep account of property.³¹ The county commissioners and the appeal tax court of Baltimore keep records of property and its valuation; and their clerks send lists of assessments to the comptroller within thirty days after the annual levy of taxes.³² Applications for deductions and abatements are made to the county commissioners and to the appeal tax court, respectively, while appeal lies in the counties to the circuit courts, and in Balti-

²⁷ Code 1912, art. lxxxix, secs. 28, 30, 32.

²⁸ *Ibid.*, secs. 33, 34, 37, 41.

²⁹ *Ibid.*, secs. 203 ff.

³⁰ *Ibid.*, sec. 8.

³¹ *Ibid.*, secs. 10, 11.

³² *Ibid.*, secs. 25, 26.

more to the Baltimore city court.³³ Refunding to state collectors for overpayments is done by the General Assembly upon notification from the comptroller or the treasurer.³⁴ When a collector finds it necessary to make a sale, by distress or by execution, in order to collect a tax, he must make a statement of his intention and allow thirty days to elapse. This regulation does not apply to Garrett or Talbot County.³⁵ Collectors are paid by commissions which are limited by law.

Rules of Taxation.—The constitution of 1867 provides that personal property of residents of the State shall be subject to taxation in the county or city which is the bona fide residence of the owner for the greater part of the year, but goods and chattels permanently located shall be taxed in the city or county where they are located.³⁶ It is also laid down that the legislature is to provide by law for state and municipal taxation upon revenues accruing from business done in the State by all foreign corporations.³⁷ And it is provided that the General Assembly shall not pass local or special laws for the assessment and collection of taxes for state or county purposes, or extending the time for the collection of taxes.³⁸

State Tax Commissioner.—By acts of 1874³⁹ and 1878⁴⁰ the office of state tax commissioner was established, to take charge of the taxation of corporations. The office is one in the Treasury Department, and the commissioner is appointed by the governor, the comptroller, and the treasurer, or by a majority of them, for a term of four years, with an annual remuneration of \$2500 and travelling expenses.

The state tax commissioner, before May 15 of each year, assesses for state purposes the shares of capital stock of all corporations subject to taxation in Maryland, and reports

³³ Code 1912, art. lxxxi, secs. 16, 18.

³⁴ Ibid., sec. 51.

³⁵ Ibid., sec. 52.

³⁶ Constitution 1867, art. iii, sec. 51.

³⁷ Ibid., sec. 58.

³⁸ Ibid., sec. 33.

³⁹ Laws 1874, ch. 483.

⁴⁰ Laws 1878, ch. 178.

the assessment to the comptroller. He also reports to the General Assembly at each session the amount of the basis of assessment for state purposes in the several counties and Baltimore City. All certificates of incorporation and amendments of charters must be delivered to the tax commissioner.⁴¹

All corporations must report annually to the tax commissioner on their shares of capital stock; security, safe deposit, fidelity, guaranty, and trust companies doing business in Maryland must specify in their annual reports their securities and investments; and he in turn assesses and levies state taxes on them. The county commissioners and the appeal tax court in Baltimore City make alterations and corrections in valuations and assessment, upon direction of the tax commissioner and the attorney-general. When returns of stockholders and of real property are made to the county commissioners and the Baltimore City appeal tax court by corporations, those officers send to the tax commissioner a statement of the property valuation, and from this he calculates the value of the shares of capital stock. This he certifies to the county commissioners and the appeal tax court of Baltimore; and these corporation shares are for county and municipal purposes valued to the owner where he resides if he is a Maryland resident. If the owner is not a state resident, they are valued to the owner in the county or city where the corporation is situated and the tax is collected from the corporation.

Special rules are laid down concerning steam railways: They are subject to an annual state tax on gross receipts, as are other corporations, and their real and personal property is subject to county and city taxation where such property is located. When, however, they are subject to a state gross receipt tax, they are not subject also to a state tax on personal and real property. When they are subject to county or city real and personal property tax, their shares of stock are not subject also to county or city taxation.

⁴¹ Code 1912, art. xxiii, sec. 4 ff.

In general, all other corporations are subject to state, county, and municipal taxation on capital stock, gross receipts, and all property. On certain kinds of corporations a state franchise tax on gross receipts or earnings is levied, which, if the business of the corporation is partly within and partly without the State, is apportioned according to the proportion of the business done in the State.

The assessment of railway rolling stock is made by the local boards of control and review and is returned to the tax commissioner, who apportions the amount for local taxation according to the proportion of mileage in each county (or in Baltimore), and notifies the local tax authorities.⁴³ Distilled spirits in the hands of distillers and warehouse owners are assessed as personal property; for their taxation each such distiller or warehouse owner must annually report on the value of such property to the tax commissioner, who, after a hearing, if necessary assesses it.⁴⁴ The state tax commissioner may administer oaths and examine persons concerning the business of any corporation in the State or its revenues.⁴⁵

STATE AUDITOR

This office is a part of the Treasury Department. The auditor⁴⁶ is appointed by the governor, the comptroller, and the treasurer, or a majority of them, for a term of two years, at a salary of \$2500. A deputy auditor is similarly appointed, and receives a salary of \$2000. The power of removal for failure to perform duties is vested in the appointive body. The state auditor examines yearly the books and accounts of all court clerks, registers of wills, sheriffs, and state's attorneys, as well as those of the officials of the state tobacco warehouses and such other state offices as the Board of Public Works directs. He reports to this board,

⁴³ Code 1912, art. lxxxii, sec. 212.

⁴⁴ *Ibid.*, sec. 218.

⁴⁵ *Ibid.*, sec. 172.

⁴⁶ *Ibid.*, sec. 229 ff.; Laws 1912, ch. 190.

which may approve suggestions for changes in accounting methods made by him for the above mentioned offices.

In 1912 the jurisdiction of the state auditor was widened so as to include all institutions receiving state aid. Provision was also made that if from his examinations a state officer were found in default, the Board of Public Works must direct the state's attorney or the attorney-general to bring suit against him.⁴⁶

BANKING DEPARTMENT: BANK COMMISSIONER

The bank commissioner⁴⁷ also is appointed by the Board of Public Works for a term of two years. His function is to supervise the banking business carried on in the State. He or his deputy examines the affairs of every banking institution except national banks at least once a year, having access to all papers, vaults, and so on. Either one of them may examine on oath the trustees or any officers or agents of a bank. If upon examination a bank appears to be insolvent or not to have complied with the law, or to be conducting a business dangerous to the public, the bank commissioner notifies the governor, who may, if he deems it proper after advising with the attorney-general, bring suit against the bank.

The bank commissioner likewise reports any violation of the law by trustees or officers of a bank to the governor, who may direct the attorney-general to prosecute. He must also examine a bank on request of its board of directors; must receive and verify reports made by banking institutions; and must, in the case of failure of a banking institution, act as a temporary receiver until a permanent receiver is appointed by the court. All members of the banking department, commissioner, deputy, and clerks, are bound to secrecy in matters concerning banks under supervision. Every bank and trust company transmits the fol-

⁴⁶ Laws 1912, ch. 190.

⁴⁷ Code 1912, art. xi, sec. 1 ff.

lowing reports to the commissioner: at least five per year on assets and liabilities, to be published in local papers; one per year on stockholders and their holdings; any special reports required by the commissioner.

Before a bank comes into existence, the bank commissioner must receive and approve the articles of incorporation. After this he examines the bank to see if all the requirements of the law have been met. He then issues a certificate, without which no bank may begin business; and he may, with the advice and consent of the governor, withhold such a certificate. He must also approve of the reorganization of national banks under the state banking laws, and must prescribe regulations for their issues of notes and currency. Similarly he must approve all consolidations of banks; and must receive notification of the liquidation of a bank, in which case he "takes over" the institution, and this acts as a bar to attachment proceedings.

The bank commissioner approves stocks and bonds held as "additional reserve" by trust companies. He notifies any bank or trust company when its reserve falls below the required amount, and if the institution fails to make up the deficit within thirty days, he may notify the governor and direct the attorney-general to institute proceedings for the appointment of a receiver or to wind up the business of the institution.

A system of fees and charges to cover the cost of examination of banks is laid down by law, and the banking department is allowed a certain fund for expenses in case the charge made upon a bank does not cover them. The bank commissioner reports annually to the governor and may suggest amendments to the law.

INSURANCE COMMISSIONER

The state insurance commissioner⁴⁸ is appointed by the governor, the comptroller, and the treasurer, who may re-

⁴⁸ Code 1912, art. xxiii, sec. 175 ff.

move him without notice or cause.⁴⁹ His term is four years. He is charged with the execution of the insurance laws of the State. The department inspects all insurance companies; supervises their securities and the valuation of their policies; issues to them certificates to do business; and, if their financial condition is not satisfactory, notifies them to cease doing business. The commissioner must inspect every insurance company at least once during his term of office, and also must inspect any insurance company in the State on the request of five or more persons pecuniarily interested. A system of fees for licenses and examinations is laid down by law, and the expenses of office are paid from such receipts. In closing out a company the commissioner works in conjunction with the circuit courts; the judge appoints an examining committee. All insurance companies must report annually concerning their policies and business, and charters for new business must be approved by the attorney-general. The insurance commissioner upon issuing annual licenses to companies to do business publishes in the newspapers abstracts of their annual reports.

REVIEW OF CONDITIONS AND NEEDS

In 1908 the governor recommended that the state treasurer be elected by the people, and that the term of office of the comptroller and the treasurer be changed. He said:

I am convinced that it is best for the interests of the people that the Comptroller and Treasurer should hold office for the same period of time, four years, for which the governor is elected.

Therefore I recommend that a Constitutional Amendment be proposed increasing the term of the Comptroller and Treasurer each to four years and making the Treasurer an elective office. The Governor-elect has declared himself in favor of lodging with the people the selection of more of their state officials and I feel confident that he will approve this recommendation.

The fee system in many state offices has frequently been attacked. In 1910 the governor called attention to the fact

⁴⁹ Townsend v. Kurtz, 83 Md. 340.

that a commission had been appointed to investigate the fee system, and he went on to say: "The present system of permitting officials to pay themselves and their subordinates from the fees collected by them and turning the excess, if any, into the State Treasury, is wrong in principle and in practice."

The value of the office of state auditor is generally recognized, but at present the scope of his authority is much too limited. He should be given general authority and proper assistance to investigate the accounts of every collector of taxes in the State. And, indeed, it has been suggested that the auditor should be given financial supervision of every administrative office in the State.

The general attitude concerning the departments of banking and insurance is perhaps one of too much regard for governmental benefit, in the form of large office receipts, and too little regard for the benefit of the State generally. Their prime function is, of course, to supervise these businesses so that the individual may be protected.

Financial Policy.—During the time that the Constitution of 1776 was in force in Maryland there was one form of activity of the state government which is worthy of special note. About the year 1820 the State felt the need of internal improvements in order that communication from one part of Maryland to another might be more easy. Accordingly a policy was begun of appropriating money . . . towards the building of railways and canals. The most important aid was given to the Baltimore and Ohio Railroad and the Chesapeake and Ohio Canal. Through these subscriptions by the State and other privileges granted, the interest of Maryland in these enterprises became very great.⁵⁰

This policy continued up until the middle of the nineteenth century, the Board of Public Works having charge of such interests and indeed a considerable amount of control over the enterprises, such as supervision of rates of toll, and so on. After the middle of the last century, however, a general movement was begun to get rid of such interests. The constitutions of 1864 and 1867 and laws passed about the end of the century made provision for such disposition.

⁵⁰ B. C. Steiner, *Institutions and Civil Government of Maryland*, p. 14.

The governor, the comptroller, and the treasurer, or any two of them, were authorized by the constitution of 1864⁵¹

to exchange the State's interest as stockholder and creditor in the Baltimore and Ohio Railroad Company for an equal amount of the bonds or registered debt now owing by the State; and subject to such regulations and conditions as the General Assembly may, from time to time, prescribe, to sell the State's interest in other works of internal improvement, whether as stockholder or creditor; also the State's interest in any banking corporation, and receive in payment the bonds and registered debt now owing by the State; equal in amount to the price obtained for the State's said interest; provided that the interest of the State in the Washington branch of the Baltimore and Ohio Railway be reserved and excepted from sale; and provided further, that no contract of sale of the State's interest in the Chesapeake and Ohio Canal, the Chesapeake and Delaware Canal, or the Susquehanna and Tide Water Canal Companies, shall go into effect until the same shall be ratified by the ensuing General Assembly.

Similarly, in the constitution of 1867⁵² the Board of Public Works was authorized to dispose of state interests in private enterprises by exchanging them for state bonds and registered state debt.

In 1898⁵³ the board was authorized to sell an annuity of \$90,000, created in 1854, payable by the Northern Central Railway Company to the State of Maryland. All proceeds from the sale were to be applied to payment of the state debt or to the purchase of securities for the sinking fund of the state debt. The board was likewise authorized to dispose of the interest of the State in the Baltimore and Potomac Railway Company.

By acts of 1892,⁵⁴ 1896,⁵⁵ and 1906⁵⁶ provision was made for the sale by the Board of Public Works of the state interests in the Washington branch of the Baltimore and Ohio Railroad Company, the Annapolis Water Company, and the Farmers' National Bank of Annapolis. As in other cases, it was provided that the stock in these companies might be exchanged for certificates of state indebtedness, and in any

⁵¹ Constitution 1864, art. iii, sec. 52.

⁵² Constitution 1867, art. xii, sec. 3.

⁵³ Laws 1898, ch. 378.

⁵⁴ Laws 1892, ch. 310.

⁵⁵ Laws 1896, ch. 172.

⁵⁶ Laws 1906, ch. 185.

event the proceeds were to be applied to cancellation of the state debt.

Gradually most of the interests of the State in private enterprises were sold. Then followed a short period during which very few state loans were made. But, beginning about the last decade in the last century, a new era of improvements was begun, this time through direct public action rather than through encouragement of private enterprises, and this necessarily brought about state loans which have gradually increased until they have become, within the past ten years, very considerable. An enumeration of several of the more recent of these loans will indicate the general tendency.⁸⁷ In 1896 there was created a Penitentiary Loan of \$500,000, in 1899 a Consolidated Loan of \$5,800,000, in 1902 a State Loan of 1902 of \$600,000, in 1911 a State Insane Hospital Loan of \$600,000, in the same year a Sanatorium Loan of \$100,000, in 1908-10 a \$5,000,000 State Roads Loan, in 1912 a Second Insane Hospital Loan⁸⁸ of \$800,000, in the same year a State Loan of 1912⁸⁹ of \$3,170,000, as well as a loan to meet temporary needs in road construction,⁹⁰ and a Johns Hopkins University Technical School Loan⁹¹ of \$600,000, and finally in the same year (1912) a State Loan of 1914 of \$1,000,000.⁹² Demands are now being made for further loans, typical among them being that for a large one for the continuation of the good roads policy.

In 1908 we find the governor recommending further disposal of remaining state interests in private financial affairs and a concentration of state finances toward paying off the increasing debts. He says:⁹³ "The State, in my judgment, has no right to take money from taxpayers for the payment of her debts when she has securities in her treasury as in-

⁸⁷ Code 1912, art. xxxi, sec. 2 ff.

⁸⁸ Laws 1912, ch. 187.

⁸⁹ Ibid., ch. 370.

⁹⁰ Ibid., ch. 361.

⁹¹ Ibid., ch. 90.

⁹² Ibid., ch. 477.

⁹³ Report 1908.

vestments that can be disposed of at fair prices and for enough to pay her indebtedness; and I hold further the opinion that the State should not own stock in banks or corporations, thus assuming a stockholder's liability and becoming a partner in business ventures."

At the end of 1911 the gross debt was \$10,428,926.13, in excess of that of the previous year by \$2,899,000, on account of the State Roads, Public Highways, and Hospital Loans. After deducting the bonds, in the sinking funds, amounting to \$5,117,379.72, and other assets of the State aggregating \$6,693,849.72, the net debt of the State was \$3,735,076.41.

Suggested Economies in Administration.—Various economies in the carrying on of the state government have been suggested: (1) A central purchasing agency has been recommended to purchase all supplies furnished to state institutions, on the ground not only that money would be saved, but that the quality of the supplies would be improved. In 1912 the governor suggested that such an agency might consist of the governor, the comptroller, and the treasurer, with authority to employ a secretary especially fitted for the work. (2) A state architect should be appointed, it has been claimed by the governor and by a commission on appropriations. At present independent architects receive large sums from the State each year; the creation of the office of state architect, it is believed, would save the State some thousands of dollars, and would bring about uniformity in architecture in all new state buildings. (3) In 1912 the governor urged the enactment of a law requiring that all state money in the hands of the treasurer be deposited after advertisement in those sound banks which will pay the highest rate of interest. This would do away with the possibility of idle money.

In 1912 the governor made the following recommendations: (4) For all use of the public highways of the State by telephone, telegraph, electric light, electric railway, or like companies there should be imposed by the State a cer-

tain small license or franchise tax, and the sum so collected should be used for the maintenance of these state roads. (5) There should be an abolishment of counsel for the Boards of Election Supervisors throughout the State; of counsel for the Liquor License Board, the police commissioners, the insurance commissioner, the sheriffs, and like departments. This work should be done by the various state's attorneys, the attorney-general, and the city solicitor of Baltimore City. (6) A number of offices should be consolidated, that of the tax commissioner with the comptroller, the Live Stock Sanitary Board with the state veterinarian, the state veterinarian with the veterinarian of the Maryland Agricultural College, and the fire marshal with the insurance commissioner. These consolidations seem radical but logical.

At various times it has been observed that there should be no continuing appropriations by the legislature, all appropriations being made from session to session. This plan would no doubt be a clearer, more orderly system of appropriation. It is undoubtedly true that running appropriations in some cases cause waste. On the other hand, an educational institution of good rank might fail to receive its appropriation because of the whim of a group of legislators. Further, it may be doubted if, with the present short sessions and the dilatoriness of the legislature, the entire list of state appropriations of all classes would be covered at one session. If these difficulties might be eliminated, the plan of biennial appropriations should be a good one.

When dealing with the financial system of any American State the English budget system usually presents itself to mind. The lack in our own system of any approximately accurate estimate of future financial needs, of any fairly accurate harmonizing of future income and expenditure, suggests that plan of the English government. Whether the budget method could be grafted on our political tree, particularly in the States, may be a question. The need of something of the sort is not to be denied.

Taxes.—There are certain corporations doing business in the State whose profits are known to be more than fair and there are certain discrepancies in corporation taxation, and the latter are usually in connection with such corporations. One example of either the carelessness or the corruptness with which the corporation taxation laws are carried out is seen in the uniform return on gross receipts made year after year by any one corporation. For instance, the tax on gross receipts of the Adams Express Company for the year ending September 30, 1907, as given in the tax commissioner's report, was \$3000, and again in 1909 it was \$3000. It is rather unlikely that this tax should come out in round numbers when the great majority of taxes listed in the table in the report come to odd figures down to the cents column; and it may be taken for granted that this would not recur, for the gross receipts of such a corporation would not be so uniform from year to year. A fault of this sort is, of course, one of the conducting of an office rather than of its organization. But such discrepancies should be remedied. Another noticeable feature in the system of taxation is that the comptroller's reports show balances due from collectors of state taxes in the various counties in some cases amounting to thousands of dollars and running back ten, twenty, thirty, and more years; this indicates a weakness of enforcement.

In 1912 the governor recommended the repeal of all laws providing for discounts in the payment of taxes, state, county, and municipal: "The discount of the taxpayer who is able to pay in time . . . lessens the amount of taxes that he pays and the deduction in the amount paid by taxpayers of this class must be made up and paid by other taxpayers, who, for many reasons, cannot avail themselves of this reduction. It is manifest, therefore, that it produces an inequality among the taxpayers of the state." Nor does he think it a wise policy, because of the existence of these laws, to levy more money than is actually expended in carrying on the government. He estimates that there should

be a difference in the taxes collected in the State, city, and county of from \$100,000 to \$175,000.

Here we enter the more abstract science of taxation. Against this recommendation by the governor must be placed the theory that stands back of the system of tax discounting, namely, that by discounting taxes, many will be led to pay who otherwise might delay for a long time and against whom recovery might be had with difficulty. On the whole, however, the idea of tax discounting seems to be an erroneous one, especially since by it the monied classes are favored and the poorer classes are obliged to bear the weight of the system.

One need, however, in the tax system of Maryland stands out above all others,—that of uniformity and equalization. There has been great confusion in rates and methods in the various counties. This defect is coming to be realized, and some improvement should be effected. In 1910, recommendations for a general reassessment had come from the Federation of County Commissioners of Maryland and from various other quarters, and the governor strongly urged it, and along with it the establishment of some uniform system of taxation. In that same year, a reassessment of all property outside of Baltimore City was provided for, and in 1912 a return of all the counties but three showed an increase of \$125,000,000 in the taxable basis of the State, according to the governor's report of the latter year.

The desired uniform system was not provided for, however, and the new governor again urged the need of "some central board to supervise and review the assessments then made (under the act of 1910) or any future assessments, in order to secure uniformity in the payment of the taxes in all sections of the State." "My observation of that assessment," he went on to say, "confirms my belief in the wisdom and necessity of such a tribunal."

In 1912 the governor, in pursuance of an act of that year,⁶⁴ appointed a "Commission for the Revision of the

⁶⁴ Laws 1912, ch. 779.

Taxation System of the State of Maryland and City of Baltimore." This commission reported in 1913, and made many criticisms and suggestions, which are, in substance, as follows:⁶⁶ The time when state taxes are due and payable is set by state law, but in practice their collection is controlled by the local laws providing for the payment of local taxes, and further, the date when local taxes are due and payable varies in each county. Although the amount of local taxes collected is many times the amount of state taxes collected, the charge of state taxes is in excess of the charge against the collection of local taxes. In some counties "local collectors advance to the State an amount which they estimate may be collected and make for themselves the amount of the discount allowed by the State," and in some counties there is great laxity in remitting back taxes. Almost numberless discrepancies in taxation throughout the counties are described. For example, Frederick County paid for the years between 1878 and 1911 on a basis less than in 1877, in spite of a great increase in property value; again, properties are assessed in some counties as low as twenty per cent of their market value.

Many of these faults are possible because there are no state laws providing for the audit of books of local collectors by state officers. It may be further remarked that many of the same criticisms apply to the method of collecting taxes from corporations. The commission urges the adoption of a plan by which there would be in each county a county supervisor, representing a central tax commission. It is stated that this method would secure more uniform standards of value and an equalization of assessment of property.

It is further pointed out that no state provision is made for the reassessment of real and personal property at regular intervals. The commission says: "The most glaring inequality is the variation in ratio of assessment to true value of property. The assessment of property is a business proposition, and should be put upon a business basis.

⁶⁶ See report, especially pp. 13-16.

To accomplish this we must accept the most modern and effective method—*control of all matters relative to taxation to be vested in a state board.*"⁶⁶ This need of a central state board of assessment and review which could equalize Maryland taxes has, in the past few years, been urged by the governor, the public press, and many interested persons. It seems safe to say that such a board will soon be created.

SUMMARY

By way of concluding this chapter we may simply review a list of some of the more important suggestions that have been made along the lines of the various branches of financial administration in Maryland: (1) extension of the comptroller's and treasurer's term of office from two to four years, and making the treasurer's office an elective one rather than a legislatively appointive one; (2) increasing the state auditor's jurisdiction; (3) abolishment of the fee system; and institution of a uniform system of bookkeeping throughout state offices; (4) elimination of extravagances in the expenses of legislative sessions; (5) doing away with counsel for many boards and offices like that of the insurance commissioner; (6) establishment of a central purchasing agency; (7) establishment of a state architect's office; (8) consolidation of certain offices in the State whose work overlaps, as that of the State Live Stock Sanitary Board with that of the state veterinarian; (9) some remedy for the system of continuing appropriations; (10) enactment of a law requiring that all state money in the hands of the treasurer be deposited in good banks at interest; (11) the exercise of great caution in the present era of large debt contraction; (12) the possible inauguration of some such plan as the budget system; (13) elimination of the system of tax discounts; (14) the very greatly needed standardization and equalization of taxes throughout the State, and for this, the creation of a central state board of tax control and review.

⁶⁶ Report, p. 9.

CHAPTER V

GENERAL ECONOMIC WELFARE

In the preceding chapters we have treated the four principal branches of state administration into which it is customary to divide a subject of this nature, namely, public education, public health, charities and corrections, and taxation and finance. There remains to be considered in this chapter a group of miscellaneous state activities.

THE PUBLIC SERVICE COMMISSION OF MARYLAND

This commission¹ is a comparatively new organ of administration, having been created in 1910. The governor appoints, and may remove after a hearing, the three members of the commission, one of whom he designates as chairman and all of whom serve six years according to a rotating system. A general counsel is also appointed by the governor, and a secretary is appointed by the commission. The general counsel represents the commission legally, and in complaints made against public service corporations he acts on behalf of the public. The commission has power to examine under oath, summon witnesses, and so on.

The jurisdiction of the commission extends to all public service business carried on either by state corporations or by those owning, leasing, operating, or controlling the corporations. This includes all common carriers, street railways in towns of not less than 2000 inhabitants, all corporations connected with the business of furnishing gas, electricity, heat, light, telegraph, telephone, water, or canal services,

¹ Code 1912, art. xxiii, secs. 413-468; Laws 1910, ch. 180; 1912, ch. 734, 162. For convenience the word "corporations" will be used here to include all corporations, companies, or concerns carrying on a public service business.

and all business of transporting freight or property. This jurisdiction involves general supervision of all public service corporations, power to examine their condition, capitalization, and franchises, all details of business and manner of conducting it with respect to adequacy, security, accommodation, and compliance with the law and with orders of the commission. The commission makes recommendations for changes in the public service laws. It prescribes a form of annual report for public service corporations, and may also require reports of earnings, expenses, capitalization, debts, salaries, and so on, within a specified time. No franchise nor any right under any franchise to own or operate a public service business may be assigned, transferred or leased, nor any contract or agreement made with reference to it, without the approval of the commission, nor may any construction or business be begun without such approval, given after a hearing to determine if it is necessary to or convenient for the public service.

Penalties are also prescribed for any failure to obey the orders of the commission, and the act of any officer or agent of a corporation is deemed an act of the corporation. The commission may investigate of its own motion any act or omission of a public service corporation, and must do so when such act or omission is in violation of the law or of any of its own orders.

Complaints against a public service corporation may be made to the commission, which is to forward them to the corporation concerned. If reparation for the alleged injury is not made by the corporation or there is no cessation of the violation within a given time specified by the commission, an investigation must be held provided there seem to the commission to be reasonable grounds for the complaint. When the commission makes investigation of such a complaint, it must either dismiss it or order the corporation to satisfy it. When the commission, after a hearing held upon its own motion or upon a complaint, is of the opinion that rates or charges are unjust, unreasonable, unduly discrimina-

tory, or unduly preferential, it must fix just and reasonable ones by order served on the corporation. When the commission similarly decides that the "regulations, practices, equipment, appliances or services" of a public service corporation are "unreasonable, unsafe, unreasonably improper or inadequate," it must fix regulations, appliances, and so on, by order served on the corporation. Provision is made to prevent one public service corporation from gaining control of another, and to prevent excessive indebtedness by such a corporation; supervision of this is given to the commission. The commission is also empowered to make valuations of corporations.

The law lays down a long list of rules for common carrier supervision, including applications for switches and sidings; filing, classifying, and publishing schedules of rates; setting up of joint tariffs between two or more corporations; use of rebates and drawbacks; giving undue preference to any person, corporation, or locality; granting free passes and reduction of fare; false rating, billing, weighing, and classifying; "long and short" hauling; distribution of cars and other facilities among shippers; investigating of accidents, and so on. The law for other public utilities is practically the same, with the addition of a few special provisions, as, for instance, that the commission is empowered to fix technical standards like "gas pressure" and "electrical efficiency" standards, and that no municipality except Baltimore may build or operate gas or electrical works without a certificate of authority granted by the commission, unless such works are for strictly municipal purposes.

John A. Lapp, in a brief comparative review of the Maryland Commission in the *American Political Science Review*, February, 1911, speaks of the judicial procedure laid down for the Maryland Public Service Commission as follows:

The law wisely adopted the Wisconsin method for procedure in the courts. Actions may be commenced in the courts [that is, in the circuit court for any county or before any judge of the Supreme Bench of Baltimore City, or in any court of Baltimore City of

appropriate jurisdiction] to set aside any order of the commission as unreasonable within sixty days thereafter. The commission is given twenty days to make answer. Precedence is given over all other civil cases.

If on the trial any new evidence is presented which was not presented to the commission, the court is required to transmit the new evidence to the commission and stay further proceedings. The commission may change its order conformably to the new evidence or let the original order stand.

The value of this provision in preventing delays and in maintaining the credit of the commission is obvious. Complainants are induced to lay their whole case before the commission in the first instance. It has been a favorite method in cases of railroad commissions and the interstate commerce commission to attempt to discredit the orders of the commission by withholding important evidence until the case is brought into court. The commission's orders being overruled by the new evidence, has caused the loss of public confidence in the work of the commission. This provision is an effective remedy.

Appeal lies to the Maryland court of appeals. In all actions arising under this act the burden of proof is upon the party adverse to the commission—a striking provision.

It would seem scarcely worth notice that the Maryland Public Service Commission has the power not only to investigate but to regulate both rates and service, yet Mr. Lapp speaks of the New Jersey law as not including rate regulation. The official discretion that is allowed by the Maryland law should be a merit. It is a valuable aid to active commissioners. Mr. Lapp in considering the Maryland law concludes: "The commission under the Maryland law does not lack for power. As in the case of the New York and Wisconsin laws, certain defects of wording may be found after experience, but embodying as it does the substance and wording of the laws of those two States after corrective amendments had been made, it should be reasonably effective in its provisions."

On account of the fact that the Public Service Commission has not long been in existence it would be difficult to predict what its actual value to the State will be. As has been stated, the organization is good. Furthermore, the commission has, since its institution, dealt with a considerable number of minor cases. It may be noted, however,

that not a great number of cases of large importance have been handled by it, or if handled, have not been so settled, with the possible exception of the Gas Case, as to have any very great effect on any of the larger public service businesses of the State; so that some doubt seems to exist among the lawyers of the State as to its efficiency in the way of positive results. The need would appear to be greater activity rather than any change in machinery.

STATE FIRE MARSHAL

The state fire marshal² is appointed by the governor, with the consent of the Senate, for a period of two years, and is removable by the governor for cause. His bond is \$5000 and his salary \$2500. He or his deputy must examine into the causes of all fires and into all suspected attempts to fire buildings, in which duties he may subpoena and swear witnesses. He reports annually to the governor. The expenses of the office are drawn from money paid into the state treasury by the insurance commissioner. At the request of the fire commissioners of Baltimore City or of the county commissioners of a county or of any municipal authorities, the fire marshal must make to them a report of any examination of a fire in their respective jurisdictions. In case incendiarism is discovered by the fire marshal, report is made to the state's attorney, who prosecutes. The fire marshal or his deputy may always enter or take charge of buildings which are burning, or which have been burning, and adjacent buildings; and may, at any time, inspect buildings which are public meeting places, such as churches, theatres, halls, hospitals, hotels, and schoolhouses, and may order provision of fire escapes sufficient for the public safety.

At the close of 1909 the fire marshal reported an examination into the causes of 357 fires of unknown origin, and 27 arrests on the charge of arson, from 17 of which conviction

² Code 1912, art. xxiii, sec. 222 ff.

resulted. At the end of 1911 the number of fires investigated reached 4000, the number of arrests 94, and the number of convictions 80.

The use of the word "may" emasculates the law; what is needed is to require regular and systematic inspection of all public buildings, and to grant to the fire marshal power to order "fire-traps" torn down. It has also been recommended that the office of fire marshal be consolidated with that of insurance commissioner, which would probably be a wise measure.

LICENSES

It is interesting to note the attitude of the State of today toward the whole field of business, as seen in its requirement of licenses.³ This is more than mere taxation; in many cases certain conditions must be complied with before the State will accept the license tax and allow a certain business to continue. A system has been arranged in Maryland whereby licenses are to be paid to the clerks of the circuit courts of the counties and of the court of common pleas of Baltimore City. In all licenses except those for fishing and for horseracing the license term expires on the first day of May after issuance. If the holder of a license dies, the license may be transferred to the widow, executor, or administrator. It is made the duty of sheriffs and constables to enforce the license system before justices of the peace. The system covers auctioneers, billiard establishments, brokers, sale of liquors and other things at fisheries, sale of liquor at horseraces, hawkers and peddlers, shipping brokers, traders and manufacturers, all sale of spirituous and fermented liquors by retailers, "ordinary-keepers" (hotels), oyster and eating houses, sale of intoxicating liquors by clubs, shows and theatrical exhibitions, shows of agricultural fair associations, stallions, gypsies, and telegraph and express companies.

³ Code 1912, art. lvi, sec. 1 ff.

The law regulates the business of pilots, who are required to take examination and receive license from a "board of examiners of Maryland pilots," consisting of the presidents of the Baltimore Board of Trade, the Corn and Flour Exchange, and the Maryland Pilot Association.⁴

The governor issues certificates to persons qualified to practice as public accountants. He appoints a board of examiners who hold office for two years; two of them must be public accountants and two must be practising attorneys. Examinations are held at least once a year for applicants for certificates, and fees are charged to cover examination expenses. Upon recommendation of the board the governor issues the certificates, which he may revoke "for sufficient cause," after a hearing.⁵ Other licenses are treated in various other parts of this study.

STATE BOARD OF LAW EXAMINERS

There is a State Board of Law Examiners,⁶ consisting of three members of the bar of at least ten years' standing, who are appointed by the court of appeals and hold office for three years, but are eligible for reappointment. This board examines all applicants for admission to the bar, and reports to the court of appeals.

LAND OFFICE

Under the constitution of 1776 there were two registers of the land office,⁷ one from the Eastern Shore and one from the Western Shore, who kept records of land grants. By the constitution of 1851 there was created the single elective office of commissioner of the land office. Under the present constitution the commissioner of the land office is appointed by the governor. The land office has charge of all land

⁴ Code 1912, art. lxxiv.

⁵ Ibid., art. lxxva.

⁶ Ibid., art. x.

⁷ Ibid., art. liv.

maps and records, the granting of patents, the issuing of warrants to survey and resurvey land (by orders to county surveyors), the hearing of disputes concerning surveys or patents given under its authority, and the survey and disposition of all public unclaimed lands. Land patents are signed by the governor; certificates of surveys must be returned by surveyors within six months. A system of fees is laid down for surveys, patents, and so on. The clerks of courts of the counties are keepers of the land records of the counties, and send to the state land office accounts of all transfers. In 1911, 132 land warrants were issued and 72 executed; 89 patents were made, granting 5864 acres of vacant land and bringing into the state treasury \$5118.60.⁸

ROADS

From the time of the constitution of 1851 there have been county road supervisors;⁹ but until recently no great attention was paid to building better highways. Within the last few years the State has made great advances in this line, and is now constructing an elaborate system of roads.

In 1906 there was passed the State Aid Highway Act, which provided for a system of cooperation between the State and the counties, each bearing part of the expense. This act also provided for the construction of State Road No. 1, which is the pike between Baltimore and Washington. For this purpose an annual appropriation of \$50,000 was made for the years 1908, 1909, and 1910. Under this State Aid Highway Act, supervision of the road work was given to the Highway Division of the Geological Survey. In 1908 a system of strictly state roads was provided for, and the work was placed in charge of a State Roads Commission.¹⁰ At first these two authorities acted separately, until in 1910 they were wisely consolidated, and the work was given over to the latter authority.

⁸ Report 1912.

⁹ Code 1912, art. xci.

¹⁰ Laws 1908, ch. 141.

The State Roads Commission created in 1908 consists of three persons appointed by the governor and two persons designated by him from the "geological and economic survey," together with the governor himself *ex officio*; the commission is to continue until the work for which it was created is completed. The governor designates the chairman and has power of removal of the members. Those appointed by him receive \$2000 per year, and the chairman receives \$2500. The commission is authorized to engage a secretary, a chief engineer, and all necessary employees. Its members are personally to inspect the public highways of the State and the work being done on them. Maps and statistics relating to the public roads and showing the progress of the work being done on them are to be published annually. The purpose of the commission is stated to be to improve generally the highways of the State, for which it is given extensive powers of survey, condemnation, and construction of roads and bridges, of entering into contracts with persons and municipalities, of calling upon the Maryland House of Correction for laborers for stone quarries, of establishing such stone quarries, and the like. The commission may make arrangements with counties for county construction, in which case it supervises generally and pays upon completion. The completion of the "general system of roads" for the construction of which the commission was created is limited to not later than July 1, 1915, in the original law. Many special provisions were made, as for instance that a boulevard should be constructed between Baltimore and Annapolis.

The law of 1908 created a State Roads Loan of \$5,000,000, for the "establishment, construction, improvement, and maintenance" of the general system of public roads; the annual expenditure of this was limited to \$1,000,000. This was apportioned among the counties in proportion to their public road mileage. In 1910¹¹ another loan, called the Public Highways Loan of 1910, and amounting to \$1,000,-

¹¹ Laws 1910, ch. 116.

ooo, was created. In the same year the commission was given power to regulate traffic on public roads by means of issued orders, for the purpose of preserving these roads, particularly against such traffic as would produce more than the ordinary wear and tear, such as very heavy wagons and automobiles. There is appropriated \$200,000 annually to aid in the building of county roads.

In 1912¹² a third loan of \$3,170,000 was provided, to be known as the State Loan of 1912; this was specifically apportioned among enumerated counties and roads. At the same time there was made the "temporary roads loan;" this authorized the State Roads Commission to make temporary loans in "such sums as it may require" on credit of the loan of 1908, in order to meet temporary needs.¹³ Also in 1912 it was made the duty of the State Roads Commission to keep in repair all state roads constructed or improved by it.¹⁴

A brief chronological review of the work done under the above laws, including mention of some of its advantages, is obtained from the governor's biennial summary of the commission's report as follows:

Since the passage of the State Aid Highway Act at the beginning of my administration twenty counties out of the twenty-three have in greater or less degree accepted the aid which the State has been prepared to give them . . . seventy-five miles of highways have been built . . . while the engineers of this department have frequently advised the counties and municipalities of the State regarding local road and street improvements.

The visible results of the work already finished induced the passage in 1906 of an Act for independent construction by the State of a modern highway between Baltimore and Washington.

The precedent thus established for the construction by a state of main lines of travel—"market roads"—if pursued to the fullest extent of the State's resources would materially hasten the improvement of the roads so well begun by the counties themselves under the State Aid Act. The efficiency of the present general act might well be supplemented by the passage from time to time of special acts authorizing the construction by the State of some of our main thoroughfares. The most progressive governments of the world to-day recognize the imperative need of smooth roads with easy grades, if the people are to reach their highest economic development.

¹² Laws 1912, ch. 370.

¹³ *Ibid.*, ch. 361.

¹⁴ *Ibid.*, ch. 375.

By the end of 1909 the commission had visited, as authorized by law, all the counties of the State, and after conferring with the people of each had laid out a system of state highways for improvement. In addition they had surveyed 431 miles of road and had contracted for the construction of 108 miles, 75 miles of which had been graded and 43½ miles had been completed. Also under the state aid system 38 miles had been completed. Roads are 14 feet wide, 8 inches deep, and are macadam, except in some counties of the Eastern Shore and Southern Maryland.

The commission reported in 1908 a desire to decrease the cost of construction, and the governor recommended in a message to the legislature a law authorizing the labor of convicts from the jails and other penal institutions of the State on road work, in getting out material in quarries, and "in other capacities where they can be safely and conveniently used," saying that this system had worked successfully in the South, and that it would not only be a return to the State on the cost of maintaining its prisoners, but would be good for the health of the prisoners themselves. The owning and operating of its own quarries by the State was suggested as another means of reducing the cost of road construction.

In 1910 the governor recommended that in counties where it had not already been done a system of repair of roads other than those comprising a part of the state system be adopted. "Improvement along this line is more vital and important than the improvement of the main state highways, which necessarily constitute a very small part of the roads used by the people in the transaction of everyday business." This is true. The main state highways, to be of greatest value to agriculture, for instance, must be supported by ramifications of smaller roads. For example, the Washington-Baltimore "pike" furnishes access to large city markets, but to be of greater benefit to the farmer it must have good branch roads. One farmer remarked that it was more trouble to drive to the new state roads than to use the old roads.

By the beginning of 1912 the aggregate number of miles of state road built or under contract was 333.63. At the time of consolidation of the state work and the state aid work, 169.60 miles had been completed under the latter system. It is interesting to note that the governor in 1912 claimed that Maryland was the first State in the Union to adopt a policy of building the main arteries of public travel solely at state expense. Demands are now being made upon the legislature for a further loan for carrying on the road work. The necessary amount has been variously estimated. One bill as drafted fixed the sum at \$6,000,000; the present governor has asked for that amount.¹⁵ The cause is good, and the construction of the system, having been undertaken, should be completed. Perhaps the most important consideration for the future is that careful provision should be made for the preservation of these roads after their construction at such great expense.

STATE SIDEPATH COMMISSIONERS

There are five state sidepath commissioners¹⁶ appointed by the governor for terms of five years, who receive expenses but no other compensation, and who are authorized to appoint county boards of sidepath commissioners. They are to construct sidepaths along highways for the use of bicycles, and to charge license fees for users of them; these fees go toward the construction and repair of the paths.

COMMISSIONER OF MOTOR VEHICLES

In 1910 there was created the office of commissioner of motor vehicles.¹⁷ The commissioner is appointed by the governor, with the consent of the Senate, for a term of two

¹⁵ At the present session of the legislature efforts have been made by Baltimore City politicians to force the passage of a "pork-barrel" bill, which, in providing for funds for the roads, would give an unusually large share to Baltimore City.

¹⁶ Code 1912, art. xci, sec. 83 ff.

¹⁷ Laws 1910, ch. 207, sec. 131; Code 1912, art. lvi, sec. 133 ff.

years, at a salary of \$3000 and with a bond of \$20,000. He is removable by the governor for official misconduct or incompetency. The governor also approves his appointment of subordinates, and prescribes the number of hours his office in Baltimore shall be open. Every owner of a motor vehicle must, once a year, register his name and address, with the make and a brief technical description of his vehicle, and receive a certificate, to be carried with his vehicle, and two metal number plates, to be displayed conspicuously on the machine. Only one plate is provided for use on a motorcycle. Dealers and manufacturers may take out special licenses. Registration fees run from \$6 to \$100. Operators' licenses must also be taken out at the commissioner's office.

The commissioner may revoke or suspend licenses, but in case of refusal to grant a license or in cases of revocation or suspension of license, appeal lies to the governor. Special provisions are made for the use in the State of motor vehicles by registered and licensed owners and operators of other States. "The governor is authorized to confer with the proper officers and legislative bodies of other States and enter into reciprocal agreements under which the registration of motor vehicles owned by residents of this State will be recognized by other States; and he is authorized to grant to residents of other States the privilege of using the roads of this State as provided in Maryland laws, in return for similar privileges granted to Maryland residents by other States."

When a motor vehicle is deposited as security and is forfeited, the commissioner sells it at auction. All fines, penalties, and forfeitures of bonds or vehicles under the motor vehicle laws are turned over to the commissioner, who, after deducting necessary expenses of salaries and office-running, pays over the surplus to the state treasurer. This surplus is divided each year; one fifth goes to Baltimore City and four fifths to the State and counties, to be used for the construction and maintenance of the public roads. Motor vehicles used by the police department, fire department, or

salvage corps of any village, town, city, or county, and all ambulances, road rollers, street sprinklers or sweepers or cleaners, and traction engines used for hauling agricultural machinery, are exempt from the motor vehicle laws. The commissioner appoints a Maryland citizen to act as "motor vehicle agent" in Washington, D. C.; he receives a salary of \$1500, and issues Maryland motor licenses.

By 1912 the Maryland commissioner of motor vehicles had collected \$103,000 in licenses. The governor then estimated that within a few years the amount thus collected would reach a sum sufficient to defray all the expenses of the maintenance of the state roads. There is now a movement greatly to increase the motor vehicle licenses, with this end in view. If the license fee is not made excessively high, the system is logical, considering the fact that automobiles are perhaps the most disastrous form of traffic to macadam roads. It has been recommended that the work of the commissioner of motor vehicles be consolidated with that of the State Roads Commission, a plan which is logical, and which would save administration expense.

NATURAL RESOURCES

Game.—The governor appoints every two years a state game warden,¹⁸ who receives a salary of \$1200 and expenses. He enforces the game and fish laws of the State. With regard to the enforcement of the fish laws the governor in 1908 wisely said: "I am still of the opinion that the State Game Warden's duties should be limited to the protecting of game; the protection of fish should be under the jurisdiction of the Fish Commissioners." There are a large number of laws dealing with birds and game, otters, raccoons, muskrats, and so on. Sheriffs, constables, officers of the State Fishery Force, and commissioned militia officers may arrest for violation of these state game laws. The game warden may appoint, subject to the approval of the

¹⁸ Code 1912, art. xcix, sec. 1 ff.

governor, deputy game wardens, who receive as compensation a portion of the fines. The game warden may call on the State Fishery Force for assistance, through the governor and the Board of Public Works. There are also laws for the preservation of diamondback terrapins, restricting the catching, regarding the size, the season, and so on, and prohibiting the destruction of the eggs; they are enforceable by game wardens, constables, and officers of the State Fishery Force.¹⁹

Lack of funds has always been a complaint in the game warden's office. Fines for violation have amounted to almost nothing, and the appropriation has always been small, in 1913 being \$2600. We quote from the game warden's report of that year:

The real deterrent to a proper administration of this department is the meagre sum appropriated for its purposes. It will readily be appreciated, by anyone giving thought to the subject, that \$2,600.00 a year is an insignificant and totally inadequate sum to be appropriated by the State for game and fish protection, if there is any real intention to protect the same.

This sum does not, of course, warrant anything in the nature of a paid deputy game warden system. . . .

One of the greatest drawbacks to game and fish protection in Maryland is the multiplicity of local laws—laws probably meant to protect, but which experience has proven to be one of the greatest means of extermination.

The warden recommends a uniform system of game laws, a state-wide gunners' license law, a uniform non-resident gunners' license law, a paid game warden system, a giving to wardens the right of search, and the making of state laws conform to federal game laws.

Fish and Oysters.—There are two commissioners of fisheries,²⁰ one from the Eastern and one from the Western Shore, appointed by the governor with the consent of the Senate for terms of two years, and with salaries of \$1500 each. They inspect all waters of the State with a view to stocking them with fish, and propagate the fish for this purpose. They keep in communication with the United States commissioner of fisheries and with the fish commis-

¹⁹ Code 1912, art. xcii, sec. 1 ff.

²⁰ Ibid., art. xxxix, sec. 1 ff.

sions of other States. They are charged with constructing fishways or fish-ladders to admit the passage of fish over dams and other obstructions in the upper Potomac and in other rivers and streams in the State. It was provided in one act that they should examine into the expediency of cutting a channel around the Great Falls of the Potomac to admit the passage of fish from tidewater into the upper Potomac, but this channel has never been cut. It is also especially provided that they are to do everything possible to exterminate eels. They report annually to the governor, and make suggestions for legislation for the propagation and protection of food fish in the State. The governor transmits this report to the legislature. Ten thousand dollars, or as much of it as the governor thinks necessary, is appropriated annually for their work. A system of licensing is laid down by the Maryland laws for certain kinds of fishing (for example, by net), for selling fish, and so on; these licenses are obtained from the court clerks, and penalties for violations are provided.

The oyster²¹ legislation in Maryland has been copious, and regulates tonging, culling, dredging, packing, and time for taking oysters, as well as the locating of private oyster lots. Licenses must be taken out from court clerks for tonging, dredging, and packing. License fees go to the credit of the "oyster fund."

There are three bodies of officers who have to do with the oyster industry in the State: the State Fishery Force; general measurers and inspectors, under the commander of the State Fishery Force, and really a part of that same branch, and the Shellfish Commission. The State Fishery Force is under the Board of Public Works. It appoints a commander of the force, who has charge of one steamer regularly in commission. Deputy commanders for various oyster boats, who appoint their own subordinates and crews, are commissioned by the governor. No commander or deputy commander may be interested financially in a scrape or

²¹ Code 1912, art. lxxii.

dredge boat. The Board of Public Works buys arms and ammunition for the boats. The state waters are divided into seven districts, each with a prescribed number of guard boats; but any guard boat may be used in any part of the State by order of the Board of Public Works or of the commander. The board may remove any officer of the force for neglect or incompetence; the commander may suspend any officer; the commanding officers may remove subordinates and fill their places.

It is the duty of the force to prevent violations of the oyster and fish laws. The commander has control of the entire force, and under the supervision of the Board of Public Works has power to direct its movements; he has an office in Annapolis, and a clerk who remains there issues the necessary orders to the force, consults with the commander, and in the latter's absence makes monthly reports. At this office are received all complaints and all applications for assistance. The commander receives a salary of \$1500. Financial reports must be made monthly to the Board of Public Works.

At each session of the General Assembly the governor appoints nine "general measurers and inspectors," four for Baltimore City and five for other districts of the State. The commander of the State Fishery Force appoints not over twenty "special inspectors" at the beginning of the oyster season every year, whom he may remove for cause. To help defray expenses, a small charge is levied on all oysters unloaded and sold, that is, one cent per bushel,—one half cent from the buyer and one half cent from the seller. The inspectors inspect and certify the quantity of merchantable and unmerchantable oysters unloaded.

The commander has general control of general measurers and inspectors and special inspectors, whether appointed by himself or not. The general measurers and inspectors supervise inspections made by the subordinate inspectors, and are also especially charged with inspecting all oyster measures; they have the power to enter premises and arrest

violators. They must return annually to the comptroller a statement of the quantity of oysters measured in their respective districts. All inspectors report monthly to the commander of the State Fishery Force. Private measurers in Baltimore city must take out licenses to do business, and any one of them may, if a charge is pending against him for violation of the laws concerning oysters and their quality and measuring, be suspended from business by the general measurers and inspectors in Baltimore City.

In 1906 there was enacted an "oyster-culture" measure, known as the Haman law,²² by which residents, but not corporations, may lease private oyster beds. Until that time all oysters had been taken by tongers, and there existed many "barren bottoms" in state waters which might well produce oysters if they were cultivated. This would bring profit to the individuals who undertook the culture, would increase the oyster industry and thereby the prosperity of the State, and would incidentally bring revenue into the state treasury. The idea was to make a survey of all the oyster beds and barren bottoms of the State, to reserve to the tongers all of the natural beds which they had hitherto had the privilege of using, but to lease the barren bottoms at small rentals to individuals who would undertake oyster farming. For the purpose of making the survey and establishing the system of leasing, a Board of Shellfish Commissioners was created.

The Board of Shellfish Commissioners consists of three members appointed by the Board of Public Works, one from some tidewater county of the Eastern Shore, one from a tidewater county of the Western Shore, and one from Baltimore City; one of them must be of the minority party. Their term is two years; and none of them is to be interested in any land taken up for bedding, planting, or cultivating oysters; one member is designated by the Board of Public Works at a salary of \$2000, and the others receive \$1800. The commissioners employ clerks and assistants

²² Laws 1906, ch. 711.

and a surveyor who is also a hydrographic engineer and who receives \$2500. If he is also a biologist, capable of investigating oyster propagation, the sum of \$500 is appropriated for such investigation by him, including the establishing of one or more "stations." The expenses of the commission are paid from the revenues arising from the leasing of land for oyster culture; an office is provided at Annapolis.

A survey of the natural oyster beds, bars, and rocks, and the delineation of it on copies of United States Coast and Geodetic Survey maps, was ordered made, marking off definitely the natural beds from the then barren ones which were to be leased. The commissioners were given power to call to their assistance any county surveyor, paying him legal rates for his services. Crab bottoms were to be delineated as well as oyster bottoms. One steamer of the State Fishery Force, under command of the deputy commander, was put under the control of the commission from April to October of every year.

A leasing system was provided by law, with certain set rates and periods. All revenues arising from this system were appropriated to the commission for its expenses, the surplus to go into the state treasury to the credit of the Special Road Fund. The commission prepares annual reports in the form of published pamphlets, including financial statements and recommendations for legislation. In 1908²⁸ the commission was also charged with surveying the clam-rocks of Pocomoke Sound in Somerset County and delineating them on the map already mentioned; these rocks were to be set aside, like the natural oyster beds, for the use of the public.

For a while the oyster-culture system seemed to work well. In 1908 the governor said: "The Haman plan of leasing the barren bottoms of the Chesapeake Bay and its tributaries, on fair rentals, the revenues from which shall be applied to the building of good roads in Maryland, has already been more than justified."

²⁸ Laws 1908, ch. 590.

In 1912 the governor stated that the system established by this act of 1906

fully protects in every way the interest of those engaged in tonging and dredging oysters, by the reservation for all time to this class of our citizenship, of the free and exclusive use of the natural oyster area of the State, and is the most thorough oyster survey that has ever been made in any State in the Union.

And for the first time in the history of Maryland, a condition prevails whereby private planting on barren areas in the Chesapeake Bay and its tributaries can be fairly and impartially tested without in any manner conflicting with the rights of oystermen, or ever arousing a suspicion on their part of any possible interference with their ancient privileges.

In 1912 the commission reported the survey completed. As a survey measure they stated that the act of 1906 was wholly satisfactory, but as an oyster-culture measure, unsatisfactory. It is to be remarked, however, that the defects pointed out were of concern to the State and to the oyster culturists, and were not in line with arguments which had been made by the tonging element in criticism of the Haman act.

At the present time the question of oyster culture has become acute. There had been a growing dissatisfaction with the system on the part of the oystermen, or tongers, which led in the latter part of 1913 to a so-called "oyster-war." This was due to the fact that the tongers resented having been excluded from any oyster bottoms of the State. There has been much agitation and much propaganda on both sides, and at the present (1914) session of the legislature efforts are being made to have the Haman law repealed, which efforts in turn are being opposed by the so-called proculturists. The contention of the oystermen is that it is their natural right to have the use of all oyster bottoms in the State. Incidentally they argue that in some cases the survey has classed as barren bottoms, and therefore as bottoms leasable by the State, certain bottoms which were natural beds; also that the oyster-culture system has not been a success, that few persons have leased bottoms, and that little revenue has accrued to the State from the system. But these conditions, if true, indicate mistakes in

method and not in principle. That the tongers' arguments are wrong in principle is very obvious, for no such group of persons can possess the inalienable rights to property not their own which they claim. And that their arguments are wrong in general practice may be demonstrated by the splendid results obtained in other States from oyster-culture systems, as, for instance, in Rhode Island and Virginia. If it be granted, as perhaps it must be, that the culture system has not been a great success in Maryland, the remedy for this is very apparently correction of the system rather than abolition of it.

In concluding this section on the administration of the fish and oyster industries in Maryland, the need of consolidation may be emphasized. The scattering of identical or similar duties among so many different departments is unnecessary. It would seem wise to take from the state game warden all enforcement of fish laws, and to give this work to a new central department, which would consist of a consolidation of the other three branches, namely, the State Fishery Force, the commissioners of fisheries, and the Board of Shellfish Commissioners.

Agriculture.—Under this head will be considered the Live Stock Sanitary Board and the chief veterinary inspector, or state veterinarian, the tobacco warehouses, and the agricultural work done under the board of trustees of the Maryland Agricultural College.

The governor appoints, with the consent of the Senate, the three members of the Live Stock Sanitary Board,²⁴ who must be engaged in breeding live stock. Their term is two years and their compensation five dollars a day, plus expenses, for actual time. The duty of the board is to "protect the health of the domestic animals of the State." The board has power to establish quarantine, sanitary, and other regulations, and to prevent the introduction into the State of diseased animals by requesting the governor to proclaim a quarantine on animals from certain States. The local

²⁴ Code 1912, art. lviii, sec. 1 ff.

boards of health are charged with investigating live stock diseases and reporting immediately to the board.

The governor appoints a chief veterinary inspector,²⁵ who must be a graduate of a recognized school of veterinary medicine, and who receives \$1000 and expenses and has under him assistant inspectors. His work is to visit farms, stables, and railway cars, and to make regulations for the isolation, disinfection, destruction, or quarantine of animals. Sheriffs and constables are to cooperate with him in carrying out his orders. He also superintends the slaughter of diseased animals at regular slaughter houses. His work is intimately connected with that of the Live Stock Sanitary Board.

All veterinary practitioners must report to the board cases of contagious live-stock disease. Only by permission of the board may an animal be inoculated with the virus of a contagious disease. The law specifically prohibits the exposure or sale of infected animals. Infected animals, buildings, and feeds are appraised and destroyed. The appraisal is made by two persons, one appointed by the inspector and one by the owner, or, if the owner neglects to appoint, both persons are designated by the inspector; and in case of disagreement, these two appraisers appoint a third. Appeal lies to the circuit court. The Live Stock Board is to cooperate with the Bureau of Animal Industry of the United States Department of Agriculture. In the case of an epidemic it may appoint special assistants to the chief veterinary inspector.

All persons supplying milk to cities, towns, and villages must register their herds with the board, which at least annually must, without notice, have such dairies inspected, and, if any one of them is found insanitary, prohibit further sale of milk from it until the premises conform to certain sanitary rules. The board furnishes dairies with certificates of health, which it may revoke at discretion.²⁶

²⁵ Code 1912, art. lviii, sec. 5 ff.

²⁶ *Ibid.*, sec. 20 ff.

The importation of dairy or meat cattle into Maryland is prohibited without a certificate of health from the proper officers of the State from which they came. Cattle sent in without this are held by the State and examined at the expense of the owner.

In 1902²⁷ a commission termed the "Cerebro-Spinal-Meningitis in Horses Commission" was created, with five members appointed by the governor, including the professor of pathology in the Johns Hopkins University and the veterinarian of the Maryland Agricultural College. Its duty as outlined was investigation of the cause, origin, treatment, prevention, and cure of cerebro-spinal meningitis in Maryland horses. No salaries were provided, but expenses were to be paid from an appropriated sum of \$2000. In 1906 an act extended the powers of the commission to other diseases of horses and cattle, to include the "investigation of immunization of cattle against contagious diseases."

In Maryland's treatment of horses, cattle, and other farm animals we find another example of administrative disintegration. This last named commission was created while there were two other departments dealing with almost the same subject. In addition to these offices there is also a Maryland Agricultural College veterinarian.

In 1908 the State Live Stock Sanitary Board recommended the passage of a law providing that every owner, manager, or operator of a creamery should, before delivering any skimmed milk, cause it to be pasteurized at a temperature of at least 185 degrees Fahrenheit. This recommendation raised still another question of jurisdiction. We find the Live Stock Board attempting to regulate the purity of milk, and we have already seen that the State Health Department has a similar task. Of course, the value of a live stock sanitary board is not questioned, and it should cooperate with the Health Department and all departments on whose spheres it borders. But these should be distinctly outlined and should not needlessly overlap.

²⁷ Code 1912, art. xliii, sec. 192.

The governor every two years appoints with the consent of the Senate an inspector of tobacco,²⁸ who must be a tobacco grower and a resident of one of the tobacco-growing counties of the State. His salary is \$2000 and his bond \$30,000. He has charge of the state tobacco warehouses in Baltimore City. He inspects all tobacco brought there, either personally or through "samplers" over whom he has complete charge. He may sell tobacco which he has raised, but he and his employes are prohibited from engaging in the business of buying and selling tobacco. He appoints clerks, samplers, laborers, and other employes; and in this duty he is charged with apportioning the patronage at his disposal equitably among the inhabitants of the tobacco-growing counties. All salaries and expenses are paid out of the receipts of office. The inspector makes quarterly reports to the comptroller, and annually pays to the comptroller all surplus revenue. In his absence the chief clerk acts as chief inspector. The inspector receives all tobacco delivered at any of the warehouses in Baltimore City and gives receipt for it.

There are detailed provisions for the storage, weighing, inspection, and marking of all tobacco delivered to these warehouses. In case of a dispute concerning the correctness of the sample furnished to the inspector a decision is rendered by an arbitration committee, one member of which is appointed by the inspector, one by the claimant, and a third by these two. This committee has the power of holding investigation, summoning witnesses, administering oaths, and assessing damages; from it there is no appeal. A similar arbitration method is followed when the owner believes his tobacco to be incorrectly sampled. In this case the committee requires the resampling of the tobacco, and, if the original sampling is proved incorrect, a correct sample is substituted. If the original sample was correct, the cost of resampling is borne by the owner. An inspector may repack tobacco at the expense of the owner if it is "trash,"

²⁸ Code 1912, art. xlvihi, sec. 9 ff.

or if it is falsely packed or is packed in unseasoned timber. If tobacco is delivered improperly coopered, it is coopered at the owner's expense. All scrap tobacco accumulating at the warehouses is sold for the benefit of the tobacco fund.

No tobacco grown in Maryland "shall be passed or accounted lawful tobacco" unless it measures up to the specifications of the tobacco laws regarding packing, and so on, but any grower or owner may sell his tobacco without inspection or storage at the state warehouses. An owner or grower may also store such tobacco in a state warehouse without inspection and simply pay storage charges. Growers sending their tobacco to the warehouses are not charged storage rates for it unless it is left in the warehouse for over six months after it is sold. In the absence of the state wharfinger the inspector of tobacco has a certain supervision over the wharves. Vessels with tobacco for the state warehouses are to be given preference over others at the wharves. If the state warehouses are crowded, the inspector may rent other storage quarters.

In 1910 the tobacco inspector reported \$7000 in bank, in addition to \$4000 paid into the treasury; and also reported that a new warehouse, the erection of which was authorized by the legislature of 1908, was nearly completed. In 1912 he stated that he would pay into the treasury \$24,000. From this it is seen that the Maryland system of tobacco inspection and storage is not only beneficial to tobacco growers, but is also profitable to the State.

The constitution of 1867 created the office of superintendent of labor and agriculture, to which a superintendent was elected for four years at a salary of \$2500. He was to supervise the state inspectors of agricultural products and fertilizers, and to prescribe regulations for them and audit their accounts; to supervise the tobacco warehouses and all other storage and inspection buildings of the State; to inquire into the undeveloped resources of the State, particularly those of Chesapeake Bay and its tributaries, and to

suggest plans to render them available as sources of revenue. He might be given supervision over other state buildings than those mentioned; he was to report to the General Assembly. This office was created so as to continue for four years and then to terminate unless continued by the General Assembly. It passed out of existence. The numerous matters put under the supervision of this superintendent have become differentiated. For instance, we have seen how the tobacco warehouses are now under an inspector of tobacco.

Since 1888 the greater part of agricultural administration has been carried on by the Maryland Agricultural College and by the Maryland Experiment Station, the latter of which is a distinct institution, but which has been put by the State under the control of the board of trustees of the college and is inseparably associated with the college. The two institutions cooperate almost as a unit, and many of the scientists connected with the station are members of the college faculty.

The board of trustees of the Maryland Agricultural College was recently given the official designation, "State Board of Agriculture."²⁹ The director of the Experiment Station is *ex officio* secretary of this State Board of Agriculture, and is its executive officer. It is also interesting to remark in this connection that the recently chosen president of the college, who was previously director of the station, retained the headship of both institutions. The Maryland Agricultural Experiment Station, spoken of in the law as a "department of the Maryland Agricultural College," is designated to receive the Maryland share of the federal appropriations for agricultural investigation, under the Adams Bill (H. R. 345, 59th Congress, 1st Session).

The Experiment Station, through its many "Departments of Investigation" and its "Extension Work," has been a great factor in improving the agricultural resources of the State, and, in spite of meagre support, has caused farm

²⁹ Code 1912, art. iia, secs. 1 ff.

lands and production to increase in value, according to government reports, approximately \$28,616,702 during the last ten years.³⁰ It must be remembered, before proceeding to a description of the departments of the Experiment Station, that the appropriations for their work and those for the college are entirely separate.

The State Horticultural Department³¹ of the Experiment Station was established in 1898³² for the purpose of suppressing and eradicating the San José scale, peach yellows, pear blight, and other injurious insect pests and plant diseases. The professor of entomology at the Maryland Agricultural College is the state entomologist, the professor of vegetable pathology is state pathologist, and the professor of horticulture is state horticulturist; these persons are responsible to the trustees of the college and Experiment Station, who fix their salaries and control all the expenses of their departments, including compensation of assistants. These officers are authorized to inspect and treat or destroy trees and plants throughout the State on public land. If they find infested trees or plants on private property, they tag them and notify the owner; if their orders are not complied with within ten days, the department treats or destroys the affected trees or plants and sends the bill to the state's attorney of the county, who collects the bill for the work. This latter seldom happens, as horticulturists of the State are glad to cooperate with the horticultural department.

At least once a year either the entomologist or the pathologist or some authorized assistant must go into each county and determine the healthfulness of general agricultural conditions. One of these officers is also required every six months to inspect every nursery in the State; if he finds no pests or diseases, he issues a certificate to the owner; if such are found, he treats or destroys at the owner's expense and

³⁰ From pamphlet, "Facts Concerning the Maryland Agricultural College," being an extract from President H. J. Patterson's address before the General Assembly, 1914.

³¹ Code 1912, art. xlvi, sec. 50 ff.

³² Patterson.

issues a certificate for the remainder of the stock. A nurseryman in disposing of his stock in any way, by sale or gift, must accompany each shipment with a copy of this certificate. All the nursery stock in the State must be fumigated with hydrocyanic acid gas under the direction of officers of the horticultural department. When nursery stock is shipped into the State, it must bear on the packing a certificate of inspection of some competent officer of the State from which it comes. If it does not, the transportation company or the person receiving it notifies the state entomologist or pathologist. The matter is then brought before a justice of the peace, and if it is proved that the stock was not properly inspected it is returned, unless the person receiving it has it satisfactorily inspected by Maryland officers at his own expense. Otherwise, the stock is destroyed. If a nurseryman of another State ships infested stock into Maryland and it is condemned by the proper officers, he forfeits its value and the consignee need not pay him.

The entomologist and the pathologist annually submit reports of their inspections and investigations to the board of trustees; these are transmitted to the governor and the General Assembly, and are published and distributed among the people of the State as bulletins of the Experiment Station.

The provisions requiring yearly inspection in every county are apparently not rigidly carried out; but often this may not be necessary. In 1908 the department reported that in 1907 twenty-one counties had been entered, and 1,664,932 trees had been inspected. "Of these ten per cent were infested with the San José scale. This represents a decreasing area of infestation, and better control of the pest." The thoroughness and the benefit of the work of this and similar inspection departments are not to be doubted. A recent striking case is cited by the director of the station, in which a fruit grower, upon advice of the horticultural department, invested \$2000 in the proper spraying of his peach trees, and cleared \$25,000 on his peach crop, instead of having it

totally destroyed by brown rot. This is indicative of the many thousands of dollars that are saved through the administration of this department.

The inspection of fertilizers³³ was placed in 1894³⁴ under the state chemist, who is professor of chemistry at the Maryland Agricultural College. A yearly license must be obtained from the comptroller to manufacture or sell fertilizer, and there is also a provision for registration with the state chemist. Fertilizer bags must be stamped with the name and address of the manufacturer or importer, with the trademark, and a statement of ingredients. The state chemist analyzes, free of charge, samples of fertilizer sent to him by any consumer; and he is also, through his assistants, to obtain samples "as far as practicable every year, of all fertilizers sold and used in the State." He is authorized to take such samples from fertilizer in transit. All these samples are analyzed and reports, which include a chemical statement of ingredients and also a statement of the commercial value, are made to the persons from whom they were received or taken. From time to time published reports are made, showing the results of analyses. The funds received from the fifteen dollar license fees are used for the expenses of the state chemist.

There have been certain exemptions from these regulations, and in 1912³⁵ the rules were somewhat changed. Fertilizer selling for less than eight dollars a ton is excluded, as are ground gypsum, dung, and fertilizers mixed to order. In the same year³⁶ special provisions, similar to those for the inspection of fertilizers, were made for the inspection by the state chemist of agricultural lime; such lime must be properly labelled and is subject to inspection.

Manufacturers of concentrated commercial feed stuffs³⁷

³³ Code 1912, art. lxi, sec. 1 ff.

³⁴ Patterson.

³⁵ Laws 1912, ch. 212.

³⁶ Ibid., ch. 176.

³⁷ Code 1912, art. xlviii, sec. 80 ff. See also Patterson.

for farm live stock and poultry must label their products, as must manufacturers of fertilizers; but this does not include hays, straws, and certain unmixed seeds and meals like wheat and barley. Before the manufacturer of commercial feed stuffs disposes of any of his product, he must file a complete statement for each brand, including name, weight, and analysis, with the state chemist, and must send to the treasurer of the Maryland Agricultural College an inspection fee of \$20 for one year's license. The state chemist may also require that a representative sample of the stuff be sent to him. The state chemist is to have analyzed, every year, at least one sample of every such feed stuff offered for sale in the State. For this purpose he and his deputies are authorized to take a sample of not over two pounds from any lot or package of feed stuff in transit or in the possession of any manufacturer, importer, agent, or dealer. The results of the analysis of these samples are published in bulletins. If the state chemist finds any violation of the laws on this subject, or finds any feed stuff that does not conform to its certified statement, he gives thirty days' notice to the manufacturer or dealer, after which he reports the violation to the state's attorney having jurisdiction, who prosecutes. Twenty thousand copies of each issue of a quarterly bulletin published by the Fertilizer and Feed Stuff's Inspection Department are distributed among the farmers of the State.³⁸

Two new departments were added to the Experiment Station in 1910. A hog cholera laboratory was established with an appropriation of \$5000 for equipment and \$5000 for two years' expenses.³⁹ This laboratory instructs the farmers concerning hog cholera, attempts to eradicate the disease, and distributes serum throughout the State. A seed inspection department,⁴⁰ with an appropriation of \$2000 a year, conducts work similar to that of other inspection departments. Its analyses of farm seeds are a valuable

³⁸ Patterson.

³⁹ Ibid.

⁴⁰ Ibid.

protection to the farmer. Furthermore, the station "aims to cooperate with every county almshouse farm or farm attached to a State institution, in testing or in multiplying the improved varieties of seeds."⁴¹

In 1912 the governor recommended the

placing at the Agricultural College some person conversant with newspaper work who would prepare in a concise and condensed form the results of the experimental work going on under the agricultural departments of the national government as well as of the different states of the Union, and send the same to the city and county newspapers, who would be glad to publish it free of cost, and thereby supply to all the farmers of the State promptly and freshly the information that was secured from the thought and experiments made throughout the country.

Recently it has also been suggested that a soil survey be made of all the counties, so that the farmers in the State might know exactly what their soils are best suited to, and, if they are deficient, what is needed to enrich them. Such a survey should be of great value to the agriculture of the State. With justification the Experiment Station petitions for increased appropriations with which to carry on its useful work.

The functions of agricultural administration are fairly well grouped in Maryland. Some few of them are conducted independently. It has already been remarked that those dealing with farm stock are too widely scattered and are duplicated. There would seem to be no reason why the work now being done by the State Live Stock and Sanitary Board and by the state veterinary inspector should not be grouped under the State Board of Agriculture, under which there is already a Maryland Agricultural College veterinarian, and under which work, not identical, yet similar, is being done.

Geological Survey.—By act of 1896⁴² there was established a State Geological and Economic Survey,⁴³ under the direction of a commission composed of the governor, the comptroller, the president of Johns Hopkins University,

⁴¹ Patterson.

⁴² Laws 1896, ch. 51.

⁴³ Code 1912, art. xci, sec. 19 ff.

and the president of the Maryland Agricultural College, who serve without salary but are reimbursed for actual expenses. An annual appropriation of \$15,000 was made. This commission has charge of the survey, appoints a geologist as superintendent, and, on his nomination, employs assistants. A well-known geologist is now at the head of the work.

The duties of the survey are to make an examination of the geological formations of the State, with especial reference to their economic products, that is, building stones, clays, ores, and so on; to examine and classify the soils and to study their adaptability to particular crops, a function which more properly belongs within the sphere of the Agricultural Experiment Station, where most of such work is done; to make an examination of the physical features of the State with reference to their practical bearing on the occupations of the people; to prepare special geological and economic maps, and to prepare reports to illustrate the geology and the resources of the State; and to consider such other scientific and economic questions as in the judgment of the commissioners shall be deemed of value to the people. The survey reports to the General Assembly, and distributes reports and information through the State. It also distributes collections of materials among the educational institutions of the State, or puts them on permanent exhibition. A topographic survey of the entire State was finished several years ago. In 1908 the governor pointed out that the publications of the Maryland Geological Survey are used in schools, colleges, and libraries in this and other countries. He went on to say that the standard of efficiency of the department, conducted as it is by scientists eminent in their line, is attested by the fact that trade and scientific journals commend it highly, and that "at every international exposition in recent years, these publications have received the highest awards, the only gold medal awarded in this class having been received recently."

*Forestry.*⁴⁴—In 1906⁴⁵ the Maryland State Board of Forestry was created, consisting of the governor, the comptroller, the president of Johns Hopkins University, the president of the Maryland Agricultural College, the state geologist, and one interested citizen and one practical lumberman engaged in lumber manufacturing in the State, appointed by the governor for two years.

The members of the board receive reimbursement for actual expenses. The state forester is appointed by the board at a salary of not over \$2000 and expenses. He must have a practical knowledge of forestry and be a "trained forester." Under the general supervision of the Board of Forestry, he has the direction of all forest interests and all matters pertaining to forestry in the State. He directs the forest wardens of the State; takes action authorized by law for the prevention and extinguishing of forest fires; enforces all laws pertaining to forests and woodlands, and instigates prosecutions for their violation; collects data relating to forest conditions and forest destruction; and directs the protection and improvement of state parks and forest reserves, and cooperates with the land owners of the State. He is required to deliver every year a course of lectures on forestry and silviculture at the Maryland Agricultural College, subject to the approval of the board of trustees of that institution. As far as his duties will permit, he is also to carry on educational courses of lectures on forestry at farmers' institutes and similar meetings in the State.

The State Board of Forestry may purchase, in the name of the State, lands suitable for forest culture and reserves, at not over five dollars per acre, using for the purpose any surplus funds not otherwise appropriated which may be standing to the credit of the forest reserve fund. The board has power to make all rules and regulations governing these reserves. The governor is authorized, upon recommendation of the board, to accept gifts of land to the

⁴⁴ Code 1912, art. xxxixA, sec. 1 ff.

⁴⁵ Laws 1906, ch. 294.

State, to be held, protected, and administered by the board as forest reserves, and to be used so as to demonstrate the practical utility of timber culture and as breeding places for game. Such gifts must be absolute, except for the reservation of mineral and mining rights in them and the stipulation that they shall be administered as state reserves; the attorney-general is charged with seeing that all deeds to such gift lands are properly executed before the lands are accepted by the State.

The state forester, upon request or when he deems it necessary and when sanctioned by the board, cooperates with counties, towns, corporations, and individuals in preparing plans for the protection, management, and replacement of trees, wood-lots, and timber tracts; provided an agreement is made by those receiving such assistance to pay at least the field expenses of the men employed in preparing the plans. The state forester may apply to the governor to commission forest wardens throughout the State to enforce the forestry laws and assist in the work of the department; these wardens are appointed for two years and receive compensation for actual services and, at the discretion of the board, \$20 per annum. The maximum number of wardens in each county is prescribed as one to every 15,000 acres or fraction thereof over one half. They have power of constables so far as the forestry, game, and fish laws are concerned; they are charged with the enforcement of the forestry laws, the reporting of violations to the state forester, and assistance in the apprehension and conviction of violators. They have right of way on all lands in case of fire, and at such times may employ men to assist, being permitted to call on all able-bodied men from eighteen to fifty years of age and to require the use of horses and other property in extinguishing the fire. They make annual reports to the state forester on the condition of the forests in their respective territories; they must make immediate report of expenses incurred in fighting fires. One half of the expense of fighting forest fires is borne by the county,

one half by the State; but owners may not be paid for fighting fire on their own lands. The county commissioners are authorized to levy taxes and appropriate money for the protection, management, and purchasing of forests.

The Forest Reserve Fund is set aside as a special fund in the state treasury, and to it goes all money collected for the violation of the forestry laws. It is used for the "protection, management, replacement, and extension of the forests of the State," under the direction of the State Board of Forestry.

The benefit of scientific forestry and a good forestry service in a State scarcely needs to be emphasized. Not only are fires prevented and tree-culture is improved and advanced, but deforestation may be prevented. The disastrous results of clearing mountain and hillside without replanting, thereby permitting soil-washing and consequent soil sterility, are well known. Recently the state forester of Maryland⁴⁶ estimated that in Maryland, which, although it is not a "timber state," has thirty-five per cent of timber land, the annual loss from forest fires has been reduced from \$250,000 to \$50,000 by means of the system of wardens and forest patrol. The state forester has advocated the passage at this session of the legislature of a law providing for the planting of trees along public roads.

*State Conservation Bureau.*⁴⁷—By act of 1910⁴⁸ there was established a State Conservation Bureau, to consist of three unsalaried commissioners appointed by the governor. The duties of the bureau are to study problems concerning the utilization and conservation of the natural resources of the State, to cooperate with the national government in conserving Maryland resources, to prepare publications from time to time, and to report to the General Assembly at each session.

The conservation of natural resources should be more closely allied with other administrative departments of the

⁴⁶ In a lecture at the Johns Hopkins University.

⁴⁷ Code 1912, art. xixA.

⁴⁸ Laws 1910, ch. 238.

State which have to do with these resources, as, for instance, the State Board of Forestry and the Geological Survey. Similarly there should be some organic connection between these departments and the State Board of Agriculture.

BUREAU OF IMMIGRATION

This bureau⁴⁹ exists for the purpose of encouraging immigration to Maryland. It is conducted by a board of three commissioners of immigration, who are appointed by the governor, with the consent of the Senate, for terms of two years. In the appointment one member is designated as president of the board, and one as state superintendent of immigration. The superintendent receives \$2000 a year and expenses; the other members receive \$500 a year and expenses. An immigration office is located in Baltimore which must be kept open from nine to five daily, where are kept for ready reference maps, pamphlets, and statistics descriptive of the geographical position of each county of the State, its agricultural and other resources and capabilities, shipping, marketing, and other facilities, the quantities and character of lands for sale and their prices, the social, educational, and other conditions of each county, and all advantages and inducements to immigrants. All information, by letter or otherwise, is furnished gratuitously to all who apply.

The commissioners appoint at a salary of \$1200 a secretary who is to be conversant, if practicable, with the English, German, Dutch, and French languages. He keeps the books and records of the office, where he must be in daily attendance; conducts its correspondence and other business; and in the absence of the superintendent, furnishes information to applicants.

For the purpose of disseminating information and of distributing and locating the immigrants who are brought into the State through the agency of the bureau, the board, in

⁴⁹ Code 1912, art. xlva, sec. 1 ff.

addition to collecting information, encourages the organization of local boards of immigration throughout the State, at local expense. The board may call on the county commissioners to assist it in collecting information. If it seems desirable, the superintendent may, personally or through an agent, visit places in the Union and Canada for the purpose of attracting to Maryland desirable immigration. He may also take other means of advertising. The board is given authority to make contracts with railways, steamship lines, and other transportation companies, securing low rates of transportation for immigrants; it may also make arrangements for their reception and temporary accommodation upon arrival in Baltimore and other points in the State, until they can be distributed and located in the various counties. The board meets monthly in Baltimore City and makes an annual report of work and expenses to the governor, who transmits it to the General Assembly.

According to reports of the bureau, in the two years of 1906 and 1907 land was purchased in various parts of the State by 250 farmers, including a number of foreigners; 3500 persons visited the bureau office seeking information about the State, its resources and its desirability as a place of residence; and 21,817 Europeans landed in the port of Baltimore. The bureau attempted to aid farmers in securing suitable labor, and "with this end in view many men, women, and children were induced to come from Europe to the farms in Maryland at no extra expense to the State." This work has continued; within the past few months there has been a movement toward the farms of many unemployed persons in the State.

From these efforts to increase immigration it would seem that Maryland has not yet reached the stage where the problem of over-immigration and undesirable immigration is a serious one, as it is in some other States. But it is to be noted that the effort is to attract such immigrants as will become farm owners and farm laborers, rather than industrial workers. It is also to be remarked that the secretary

is "to be conversant, if practicable, with the English, German, Dutch and French languages;" this would seem to indicate that in creating the bureau the legislators had in mind English, German, Dutch, and French immigrants, who are as a rule of a better class than those coming from the more southerly parts of Europe.

In 1912 the governor recommended that the Bureau of Immigration be consolidated with the Maryland Agricultural College and administered by its trustees, "thereby saving administration expenses." Presumably this consolidation will not take place.

INDUSTRIAL BUREAU

There is a "Bureau of Statistics and Information as to Branches of Industry,"⁵⁰ the head of which is called "chief of the Industrial Bureau" and is appointed by the governor, with the consent of the Senate, for a term of two years and at a salary of \$2500 per annum. The annual appropriation is \$10,000. The bureau is directed to collect statistics, to operate a free employment agency, to arbitrate labor disputes, and to enforce child labor laws.

Statistics.—The bureau collects statistics and information regarding labor, with especial reference to wages and the causes of strikes and disagreements; agricultural conditions and products, acreage under cultivation, character and price of lands, live stock, and so on, which may be of general interest and calculated to attract immigration; mineral products, the output of mines and quarries, and the manufacturing industries; and railways and other transportation companies, shipping, and commerce. It is a bureau of general information, and all state officers must send to it copies of their reports as soon as they are published. This information it classifies and publishes annually.

Employment Agency.—The bureau has organized and operates a free state employment agency. It has been rec-

⁵⁰ Code 1912, art. lxxxix, sec. 1 ff.

ommended that the scope of this agency should be widened to cover the entire State by the establishment of additional branches for the distribution of unemployed persons over the State.

Arbitration of Labor Disputes.—This function was introduced by act of 1904.⁵¹ On the receipt of information from an employer or from a committee of employes, or from any reliable source, that a dispute has arisen between employers and employes involving ten or more persons, which may be the result of a strike or a lock-out, the chief or a deputy of the Industrial Bureau visits the scene and attempts to mediate. If this purpose cannot be accomplished, he endeavors to secure the consent of the parties to the formation of a board of arbitration, to be composed of one employer and one employe of the same or a similar trade, not involved in the dispute, chosen by the respective parties to the controversy, and a third arbitrator selected by the first two; on their failure to select this third, the chief of the Industrial Bureau, or a deputy, acts. If the parties refuse to arbitrate, the chief of the bureau or his deputy investigates the dispute, for which purpose he is given power to summon witnesses, administer oaths, and compel the giving of testimony and the production of books and papers. Having determined in his judgment which party is mainly "responsible and blameworthy" for the continuance of the dispute, he publishes in some daily paper a report assigning such responsibility or blame over his official signature.

Supervision of Child Labor.—The chief of the Industrial Bureau has the supervision of child labor. For the purpose of enforcing child labor laws he employs eight inspectors, at a compensation of \$900 per } and expenses, who, like the school attendance officers, visit business establishments to see whether any minors are employed contrary to the law, and if they discover violations report them to justices of the peace. The bureau also issues special

⁵¹ Laws 1904, ch. 671.

permits for child employment, and for carrying on this branch of its work receives from the State \$12,000 annually. The bureau chief is authorized to employ, in addition to the eight inspectors, one or more physicians, at a total compensation of not over \$2500, which is to be paid by Baltimore City.

The chief of the bureau reported in 1908 that "the enforcement of the Child Labor Law has received special attention since its adoption," and that a total of 20,087 permits to work had been given to children between twelve and sixteen years of age. He also stated that the sweat shop law was "vigorously enforced," and that the clothing industry in Baltimore, which gives employment to 18,000 people and has an output estimated at \$25,000,000, was well regulated. In 1912 he reported that in 1911, under the child labor and factory laws, 23,599 places had been visited, 649 more than in 1910; and that the law prohibiting the employment of children under sixteen years of age more than ten hours a day was being well enforced.

The provisions concerning the age limits for employment are so variously and confusingly set forth that it is difficult to generalize concerning them. Generally speaking, the minimum age is twelve in some employments, fourteen in others, and sixteen in certain enumerated dangerous employments. There are also provisions requiring a certain amount of schooling. Every child employed under sixteen years of age must receive a certificate from the Industrial Bureau; this certificate vouches for age (on authentic evidence), a certain physical development, a certain amount of schooling, and so on. It is issued in Baltimore by the Industrial Bureau and in the counties by school superintendents or the bureau.

STATE WHARFINGER⁵²

The governor, with the consent of the Senate, appoints every two years a state wharfinger⁵³ in Baltimore City. This official takes charge of the wharves in Baltimore belonging to or rented by the State, and charges wharfage fees. His compensation is \$250 a year plus one fifth of the fees.

WEIGHTS AND MEASURES

A system of standard weights and measures⁵⁴ is provided in the State, based on the United States standards. The administration of this system in the counties is placed in the hands of the county commissioners, who appoint "keepers of standard weights and measures." These keepers inspect all weights and measures and brand them with the letters "Md. S." (Maryland Standard), and investigate the use of fraud in weighing and measuring. There are special standards established by the State for different products, particularly for fruits and vegetables.

A platform scale for weighing tomatoes is kept in Baltimore City by the Board of Public Works. This was established by act of 1910,⁵⁵ and by the same act the office of weigher was created. This weigher, who is appointed by the governor, weighs all vegetables sold by weight that are brought to Center Market Space in Baltimore City, charging for this service a small fee.

STATE WEATHER SERVICE

The State Weather Service⁵⁶ is under the control and management of the Johns Hopkins University, the Maryland Agricultural College, and the United States Weather

⁵² Code 1912, art. xcvi.

⁵³ Section 1 of this article reads "one or more wharfingers," but all other sections refer to a "state wharfinger."

⁵⁴ Code 1912, art. xcvi.

⁵⁵ Laws 1910, ch. 738.

⁵⁶ Code 1912, art. xcvi.

Service. Its officers are a director, designated by the president of the Johns Hopkins University; a secretary-treasurer, designated by the president of the Maryland Agricultural College; and a meteorologist, designated by the chief of the United States Weather Bureau. These officers constitute a board of government under the direction of the institutions from which they receive their appointments. They receive no compensation.

The central station is at the Johns Hopkins University. The board of government was authorized by the act creating it⁸⁷ to establish, if practicable, one or more voluntary meteorological stations in each county, under its supervision, to cooperate with the chief of the United States Weather Bureau. The board is authorized to print weekly and monthly reports and distribute them in the State. Annual reports are made to the General Assembly.

STATE MANUAL

The secretary of state is required to publish annually a State Manual⁸⁸ of general information, including lists of officers and their salaries, amounts of the public school tax, the gross and net debt of the State, appropriations to educational and charitable institutions, and similar information. This work is somewhat similar to that of the Bureau of Statistics and Information (Industrial Bureau), and might be consolidated with it.

CONCLUSION

It seems unnecessary, except in a very broad way, to set forth here the conclusions and recommendations which have been made throughout the preceding paragraphs and which have been recapitulated at the close of each chapter. Most of them may be included in the statement that greater centralization and correlation of functions are needed.

⁸⁷ Laws 1892, ch. 329.

⁸⁸ Code 1912, art. lxxxv.

We have seen that in public education the system of primary and high schools has been fairly well organized under the control of a state board; that in lower education the need is for greater uniformity and standardization in the prescribing of courses of instruction and especially in the choosing and regulating of teachers—a need of a civil service system which will work justice both to the teachers and to the State; and further, we have seen that in collegiate education there should be some central supervision leading to high and uniform standards.

In the field of public health the demand is for greater central power that will enable the very efficient State Board of Health to enforce local sanitation and better to control the local health officers.

In that branch of the state government which deals with public charities the deficiencies are great. Maryland has pursued a policy of haphazard benevolence, appropriating for the benefit of private and special interests as well as for public general ones. She has a board of charities which, in spite of efficiency in its sphere, is limited in its powers. We can now see, however, indications of a tendency to adopt the only proper policy—that of cutting off private and special interests from state aid, and of granting assistance only to state institutions and organizations. And for the proper conducting of this policy there should be a board of state aid and charities which will be not merely advisory, but supervisory. The treatment of the insane by the State embodies the best principles that the State has yet put into practice. Here it has been undertaken to make the care of all indigent insane persons a state matter, state insane hospitals in charge of trained physicians having been established and a Lunacy Commission composed of experts having been created. The plan of state care, so well begun, should be made complete.

The page which Maryland has written in the story of the treatment of criminals has been black. Recent investigations, bringing to light, as they have, cruelty, filth, and cor-

ruption in its correctional organization, will undoubtedly lead to striking reforms. And these reforms will be based on modern ideas of reformative rather than punitive justice. Proper sanitation and medical treatment will be established. Corruption among officers and convicts will be eliminated, it is hoped. Unnecessarily cruel punishments will be abolished. First offenders will be kept from hardened criminals and their evil influences. The unjust system of contract labor will be done away with, and convicts will be given more healthful occupation in the open air, on farms, or perhaps on the roads of the State. The indeterminate sentence and a special board of pardon and parole will perhaps be established. It may even be that an honor system will be tried, now that other States, as for instance, Colorado, have demonstrated its practicability. The entire system, instead of being divided among separate and independent boards and chiefs liable to corruption, should be united under one central and enlightened board.

Again, in the field of finance, or more properly in one of its large divisions, that of taxation, the need is for centralization. There has been injustice and inequality in the levying and collecting of taxes throughout the State. From these conditions of distintegration has arisen the demand for a central board of assessment and equalization that would correct the evils and make taxation more uniform and equitable.

Finally, throughout many of the various minor branches of administration there is seen the need of centralization. Numerous offices now carrying on identical or similar work should be combined.

However, centralization and integration are not to be confused. It is true they are very closely related and usually go hand in hand; yet they are distinct. We may even find a considerable amount of centralization in a government, and at the same time an inconsiderable amount of integration. In fact, this is true of Maryland administration when viewed as a whole. Many departments lack central power,

but in their relation to the governor are fairly well "centralized" in the sense that their chief officers are appointed by the governor. Nor does the governor lack greatly in power of removal. One difficulty is that in a number of cases an officer is appointed by the governor but is responsible to the General Assembly; in fact, in many instances where reports are made to the governor they must be transmitted to the General Assembly, and the governor's part tends to become only nominal.

This need of integration implies putting branches of a department in closer connection with each other as well as with the department, and placing the departments themselves in closer relation; in other words, it is a need of co-operation. And along with this goes the need of standardization, as, for instance, in the schools.

This need of integration of the departments suggests some system modelled more or less after the plan of the British Ministry. The advantages gained by such a correlation of departments would be numerous. If heads of departments were permitted to take part in legislative discussion, the present necessity of lobbying would be obviated. Furthermore—and this is important—if some budget plan were adopted, the present disconnected, haphazard system of appropriation would be greatly improved.

The need of trained experts cannot be overemphasized. They are already found in many administrative departments, but their proportion should be increased. They need not necessarily fill purely advisory positions; these may be occupied by men of general ability who can dictate wise policies and at the same time keep in touch with the public. But the actual work itself should be carried on by experts who would not submit to the vicissitudes of politics, men who are given good remuneration and long tenure. The whole system should be conducted very much as is a great railway, with a board of directors of supervisory capacity, but with workers trained each in his own special branch.

Recent writers have commented approvingly upon the

increasing power of the governor in certain of our States.⁵⁹ President Lowell attributes this changed condition to the growing distrust of the American legislature, and points out that it takes place partly through statutory enactment and partly through public sentiment.⁶⁰ Governor Hughes says, "It is out of the conflict of competing interests or districts that the executive emerges as a representative of the people as a whole."⁶¹ And in no other field is the governor's increasing importance more striking than in that of administration. His powers in Maryland administration are already very great, especially in the matter of appointments, but his actual supervision should be increased. We may summarize Maryland administration needs as follows: gubernatorial supervision; intra-departmental as well as inter-departmental centralization; integration; and standardization of services.

⁵⁹ See J. M. Mathews, "The New Rôle of the Governor," in *American Political Science Review*, May, 1912.

⁶⁰ *Public Opinion and Popular Government*, Chapter X.

⁶¹ J. A. Fairlie, "The State Governor," in *Michigan Law Review*, March, April, 1912.

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